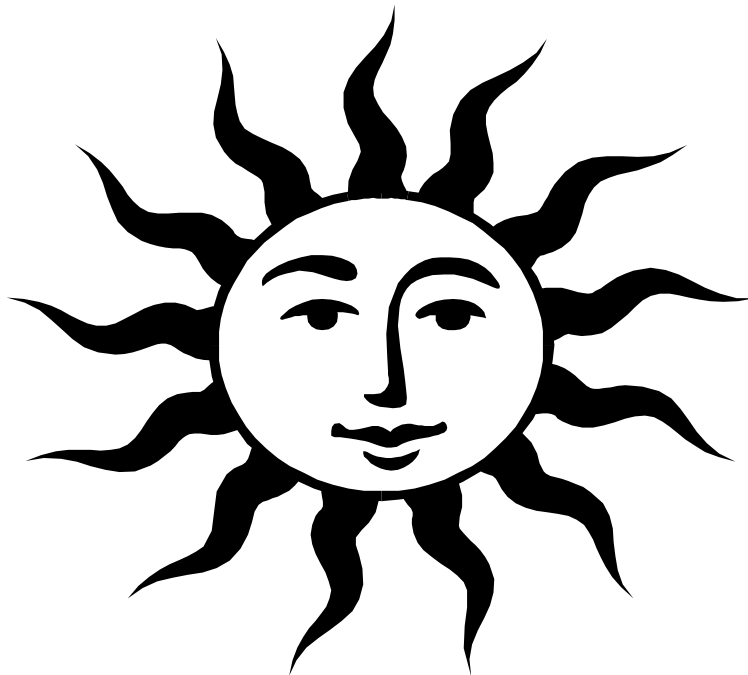


**HANDBOOK
ON
SUNSET & SUNRISE
REVIEW**



Joint Legislative Audit Committee
Forty-seventh Legislature
2005 - 2006

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INTRODUCTION

Established by Laws 1978, Chapter 210, the sunset review process is the process by which the Legislature reviews the purpose and functions of state agencies to determine whether continuation, revision, consolidation or termination is warranted. Sunset reviews are based on audits conducted by either the Office of the Auditor General (OAG) or a Committee of Reference (COR). Upon completion of the sunset audit, a public hearing is held by the COR to discuss the audit and receive testimony from agency officials and the public.

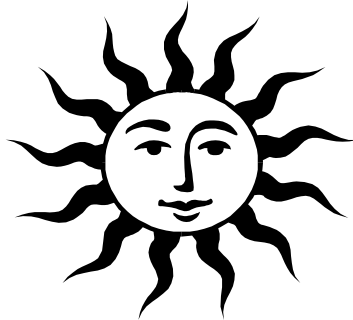
Similarly, the sunrise process was established, by Laws 1985, Chapter 352, to provide a mechanism for health professions to request regulation or expansion in scope of practice. The sunrise process begins when an applicant group presents the Joint Legislative Audit Committee (JLAC) with a report defining the need for regulation or scope of practice expansion. JLAC then assigns the report to a COR for review and recommendation.

This handbook is designed to be a guide for legislators and staff involved in the sunset and sunrise review of state agencies, boards, commissions, institutions and programs (agencies). However, both the sunset and sunrise processes are provided for pursuant to statute and it is recommended that statute be consulted in conjunction with the use of this handbook.

For ease of reference, the handbook is divided into four primary sections. The first section provides a brief description of the entities that play an important role in the processes, specifically, JLAC, COR, OAG and legislative staff. The next two sections are divided based upon the actual sunset and sunrise processes. These two sections are further divided into brief descriptions of the overall sunset or sunrise process and a step-by-step guide of how to conduct a sunset or sunrise review. Finally, samples from previous reviews are provided to help eliminate questions regarding written correspondence and final reports.

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Role of Sunset Review Participants



ROLE OF PARTICIPANTS

The sunset and sunrise processes primarily involve JLAC, COR and the OAG. Legislative standing committee members, Joint Legislative Budget Committee (JLBC) staff, agency staff and legislative committee staff and interested parties also play important roles in the process.

JOINT LEGISLATIVE AUDIT COMMITTEE

(Title 41, Chapter 7, Article 10.1, Arizona Revised Statutes)

MEMBERSHIP

JLAC is a twelve-member committee, consisting of six members from each chamber of the Legislature. Five members each are appointed by the President of the Senate and Speaker of the House of Representatives, based on the members' understanding and interest in agency audits. JLAC membership includes an Appropriations Committee member from each chamber and no more than three appointees from each chamber may be members of the same political party. Additionally, the President of the Senate and Speaker of the House of Representatives serve as ex-officio members. JLAC chairmanship alternates each year between the House and Senate.

Below are the JLAC members for the Forty-sixth Legislature:

Senate Members

Senator Robert Blendu (Chair 2005)
Senator Gabrielle Giffords
Senator John Huppenthal
Senator Harry E. Mitchell
Senator Carolyn S. Allen
President Ken Bennett, *Ex-officio*

House Members

Representative Laura Knaperek (Chair 2006)
Representative Tom Boone
Representative Pete Rios
Representative Ted Downing
Representative Steven B. Yarbrough
Speaker Jim Weiers, *Ex-officio*

JLAC POWERS & DUTIES

JLAC oversees all legislative and agency audit functions. Subject to legislative approval, JLAC appoints the Auditor General and directs all sunset, performance, special and financial audits and special research requests. JLAC is required to ensure that agencies comply with audit findings and recommendations and has legislative subpoena power.

Following are the statutorily prescribed functions of JLAC:

- assigning agencies subject to sunset review to a COR;
- assigning sunrise review applicants to a COR;
- determining whether the OAG or a COR will conduct an agency's sunset audit;
- directing the OAG or a COR to conduct performance audits or special audits;
- overseeing the preparation and introduction of legislation to delay a sunset review if the OAG or a COR is unable to complete the review according to schedule;
- directing the OAG or a COR to conduct performance audit follow-up reviews;
- assigning COR chairmen [*JLAC has the statutory authority to appoint COR chairmen, but traditionally the chairs are selected by standing committee chairmen when appointing the members*]; and
- meeting quarterly or on the call of the chairman.

PERFORMANCE AUDIT FOLLOW-UP PROCEDURES

In July 1997, JLAC adopted a process for following up on audit recommendations. At the September 29, 1999 meeting, JLAC expanded the audit recommendation follow-up process. Prior to this September 29th meeting, the OAG would follow-up with an agency six months after a performance audit was issued and report to JLAC whether the agency was making progress in implementing the audit report's recommendations. If the agency appeared to be making satisfactory progress, the OAG conducted no further follow-up. If the agency was not making progress, further follow-up was conducted at 18-months. However, JLAC members expanded the audit follow-up procedures at the September 29, 1999 meeting. The follow-up process in place as of September 1999 is as follows:

1. In the written response to each audit recommendation in a performance audit report, the auditee will make one of the following statements:
 - a. The finding of the OAG is agreed to and the audit recommendations will be implemented.
 - b. The finding of the OAG is agreed to and a different method of dealing with the finding will be implemented.
 - c. The finding of the OAG is not agreed to but the recommendation will be implemented.
 - d. The finding of the OAG is not agreed to and the recommendations will not be implemented.

2. Following the release of each audit report, JLAC will ensure that each audit receives a public hearing by a legislative committee. JLAC may refer the audit to a COR if the audit is performed under the sunset law. However, JLAC may request other pertinent committees to hold a hearing on any audit, or JLAC may hold the hearing.
3. JLAC shall request other committees holding a hearing on an audit to specifically address, and report back to JLAC, the nature of all report recommendations with which the agency does not agree and will not implement.
4. Six months after the audit report is issued, the auditee must provide to the OAG a written explanation of the status of all audit recommendations. (The OAG shall require the auditee to provide data and information necessary to document their efforts at implementing the recommendations.) The OAG will then issue a follow-up report to JLAC indicating the status of the agency's efforts in implementing the audit recommendations. Specifically, the follow-up report will identify how many recommendations the agency has implemented, how many recommendations they are in the process of implementing and how many recommendations have not been implemented. If the auditee has implemented all recommendations as of six months, the OAG shall report this fact to JLAC and no further follow-up will be conducted.

If the auditee has not fully implemented all recommendations at six months, but appears to be making progress, then this process continues at six-month intervals up to a period of two years after the release of the audit report.

If the OAG finds that the auditee is not making substantial progress in implementing the recommendations at six months and 12 months, the OAG may, within a period not to exceed 18 months, initiate a more involved follow-up review. This review shall determine the status of the recommendations and what further actions, if any, are still necessary to implement the recommendations.

At two years, JLAC may require the auditee to appear before it to review the status of any remaining recommendations and to determine whether continued reporting is warranted.

The OAG has the authority to verify all information provided by the auditees and issue reports to JLAC and other relevant legislative committees.

5. The JLAC Chairman may at any time following the release of an audit report convene a panel of JLAC members to meet with the OAG and the auditee to discuss recommendations, with which the agency disagrees and will not implement. The panel will hear from both parties and will recommend to the full committee that:
 - a) There is no need for further action, or
 - b) Sufficient differences exist between the OAG and the auditee to warrant the attention of the full JLAC.
6. JLAC will determine the need for further review and may, as an option, convene a final meeting of the two parties.
7. If after final review, JLAC feels it is warranted, it will draft a memorandum summarizing the differences between the OAG and the auditee and will make a memorandum available, together with any recommendations, to all members of the Legislature.

OFFICE OF THE AUDITOR GENERAL

(Title 41, Chapter 7, Article 10.1, Arizona Revised Statutes)

REQUIREMENTS

Statute provides for the appointment of the Auditor General by JLAC, subject to approval by the Legislature. The term of office is five years, however, the Auditor General may be removed from office pursuant to a concurrent resolution of the Legislature. Persons who serve as the Auditor General may be re-appointed.

Statute requires the Auditor General to be a certified public accountant licensed to practice in Arizona and therefore subject to the standards and ethics of the accounting profession as regulated by the Arizona Board of Accountancy.

OAG POWERS & DUTIES

The OAG is responsible for providing independent financial, performance and compliance audits and special research requests in support of legislative oversight and public accountability of funds administered by the state and certain local governments. In order to perform its audits, the OAG is authorized by statute to access agency correspondence, files and other records, bank accounts, criminal history record information, money and other property of any state agency. Additionally, prior to conducting a performance audit, the OAG attempts to contact legislators and legislative staff to receive input and “leads” regarding areas of concern. The OAG staff also contacts legislators and staff following the publication of an audit to respond to any questions regarding audit findings.

The OAG is required to perform the following duties relating to the sunset process:

- prepare and submit to JLAC a list of all agencies scheduled for sunset termination at least 20 months prior to agency termination;
- recommend to JLAC sunset audits to be conducted by the OAG or COR;
- conduct all sunset (performance) audits assigned by JLAC;
- distribute copies of agency performance audits to JLAC members and staff; and
- testify before the COR to performance audit findings.

COMMITTEES OF REFERENCE

(ARS § 41-2954)

MEMBERSHIP

The COR is a subcommittee of a standing committee, designed to act as the proxy of the standing committee. Consisting of five members, a COR is appointed by each Senate and House of Representatives standing committee. Pursuant to statute, no more than three members may be from the same political party. Although JLAC has the statutory authority to appoint the COR chairs, traditionally this has been done by the chair of the standing committee at the same time he or she appoints the COR.

When conducting a sunset or sunrise hearing, the House and Senate COR meet jointly, therefore there is a single COR, and separate motions for the House side and the Senate side are *not* in order. A quorum of a COR for sunset and sunrise purposes consists of a majority of all members.

Agencies subject to sunset review are generally assigned to a COR whose standing committee would most likely be responsible for hearing any legislation affecting that particular agency and has knowledge or expertise in that particular subject area.

COR POWERS & DUTIES

A COR has legislative subpoena power and is responsible for:

- conducting a sunset audit of each agency assigned to it by JLAC;
- holding at least one public hearing upon receipt or completion of the sunset audit;
- evaluating and recommending agency continuance, revision, consolidation or termination based on statutory sunset factors;
- evaluating and recommending regulation or increased scope of practice based on statutory sunrise factors;
- submitting a final sunset or sunrise review report by December 1 to JLAC, the President of the Senate, Speaker of the House of Representatives, Governor, OAG and the agency that was the subject of the review; and
- preparing legislation to implement its recommendations [*JLAC is statutorily required to oversee the preparation of such legislation, but traditionally the COR chair and staff have overseen this responsibility*].

AGENCY SUBJECT TO REVIEW

An agency subject to review performs the following functions in the sunset and sunrise review process:

- *Assists the OAG or COR* - The agency works with the OAG, providing any necessary information. If the sunset audit is conducted by a COR, the agency provides all necessary information and responds to the sunset (audit) questions submitted by the COR.
- *Testifies at hearings* - Agency officials testify at public hearings and present agency responses to the required agency factors, providing justification for agency continuance, modification or creation and any additional information requested by COR members.
- *Supports introduction of legislation* - Agency officials should work with staff and COR chairman to coordinate the drafting and introduction of legislation to continue, modify or create the agency pursuant to COR recommendations.

LEGISLATIVE STAFF

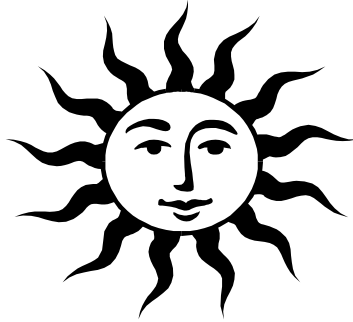
As the chairmanship of JLAC shifts between the House of Representatives and the Senate, so does primary staffing responsibility for sunsets and sunrises. Sunset and sunrise staffing responsibilities shift with legislative terms. Senate legislative staff is responsible for staffing sunset hearings during even-numbered legislatures (Forty-eighth Legislature) and legislative staff from the House is responsible during odd-numbered legislatures (Forty-seventh Legislature). Regardless of who has primary responsibility, it is always a good idea to keep one's staff counterpart(s) apprised of information and progress.

Staff responsibilities vary depending on whether the OAG or COR conducts the sunset audit. In most instances, staff is responsible for:

- coordinating with their Senate/House counterpart;
- initiating contact with the agency subject to sunset review;
- compiling background information;
- preparing information for COR members and other interested Legislators;
- scheduling the sunset and sunrise hearing(s);
- writing the final sunset and/or sunrise report; and
- facilitating the drafting of any legislative recommendations of the COR.

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**Committees
of
Reference**



(Forty-seventh Legislature)

Senate Committees of Reference
(*Forty-seventh Legislature*)

<p><i>Appropriations</i></p> <p>John Huppenthal, Chair Marsha Arzberger Jorge Luis Garcia Jack W. Harper Jim Waring</p>	<p><i>Commerce and Economic Development</i></p> <p>Barbara Leff, Chair Ken Chevront Richard Miranda Jay Tibshraeny Jim Waring</p>	<p><i>Finance</i></p> <p>Dean Martin, Chair Ken Chevront Jorge Luis Garcia Jack W. Harper Jay Tibshraeny</p>
<p><i>Family Services</i></p> <p>Karen Johnson, Chair Linda Gray Rebecca Rios Victor Soltero Thayer Verschoor</p>	<p><i>Government Accountability and Reform</i></p> <p>Jack Harper, Chair Robert “Bob” Burns Albert Hale Richard Miranda Thayer Verschoor</p>	<p><i>Government</i></p> <p>Jim Waring, Chair Bill Brotherton Jake Flake Linda Gray Harry E. Mitchell</p>
<p><i>Health</i></p> <p>Jim Waring, Chair Carolyn Allen Marsha Arzberger Robert Cannell Barbara Leff</p>	<p><i>Higher Education</i></p> <p>Linda Gray, Chair Jake Flake Albert Hale Victor Soltero Thayer Verschoor</p>	<p><i>Judiciary</i></p> <p>John Huppenthal, Chair Linda Aguirre Jack Harper Dean Martin Richard Miranda</p>
<p><i>K-12 Education</i></p> <p>Toni Hellon, Chair Linda Aguirre Ron Gould Karen Johnson Harry E. Mitchell</p>	<p><i>Natural Resources and Rural Affairs</i></p> <p>Marilyn Jarrett, Chair Marsha Arzberger Timothy S. Bee Robert Blendu Robert Cannell</p>	<p><i>Transportation</i></p> <p>Thayer Verschoor, Chair Carolyn Allen Marilyn Jarrett Rebecca Rios Victor Soltero</p>

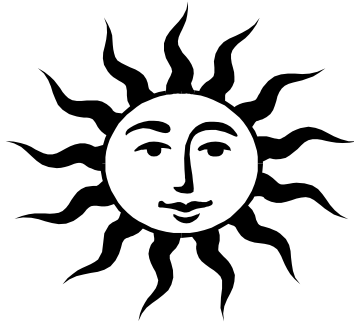
<i>House of Representatives Committees of Reference</i> <i>(Forty-seventh Legislature)</i>		
<i>Appropriations-B</i> Tom Boone, Chair Robert Meza Warde Nichols Steven Yarbrough Pete Rios	<i>Appropriations-P</i> Andy Biggs, Chair Jack Brown Judy Burges David Lujan Lucy Mason	<i>Commerce</i> John McComish, Chair Bill Konopnicki Debbie McCune Davis Robert Meza Michele Reagan
<i>Counties, Municipalities & Military Affairs</i> John Nelson, Chair Cheryl Chase Russell Jones Tom Prezelski Jerry Weiers	<i>Environment</i> Michele Reagan, Chair Ray Barnes Steve Huffman Leah Landrum Taylor Kyrsten Sinema	<i>Federal Mandates & Property Rights</i> Chuck Gray, Chair Manuel Alvarez Judy Burges Tom Prezelski David Burnell Smith
<i>Financial Institutions & Insurance</i> Ted Carpenter, Chair John McComish Debbie McCune Davis Nancy McLain Robert Meza	<i>Government Reform & Government Finance Accountability</i> Bill Konopnicki, Chair Cheryl Chase Phil Lopes John McComish John Nelson	<i>Health</i> Rick Murphy, Chair David Bradley Laura Knaperek Linda Lopez Doug Quelland
<i>Human Services</i> Pete Hershberger, Chair Manuel Alvarez Mark Anderson David Bradley Warde Nichols	<i>Judiciary</i> David Burnell Smith, Chair Steve Gallardo Ben Miranda Doug Quelland Steven Yarbrough	<i>K-12 Education</i> Warde Nichols, Chair Martha Garcia Ann Kirkpatrick David Burnell Smith Bob Stump

House of Representatives Committees of Reference
(Forty-sixth Legislature)

<p><i>Natural Resources & Agriculture</i></p> <p>Russell Jones, Chair Cheryl Chase Ann Kirkpatrick John Nelson Tom O'Halleran</p>	<p><i>Public Institutions & Retirement</i></p> <p>Trish Groe, Chair Jennifer Burns Meg Burton Cahill Steve Gallardo Marian McClure</p>	<p><i>Transportation</i></p> <p>Pamela Gorman, Chair Meg Burton-Cahill Russell Jones John Nelson Tom Prezelski</p>
<p><i>Universities, Community Colleges & Technology</i></p> <p>Laura Knaperek, Chair John Allen Andy Biggs David Bradley Ted Downing</p>	<p><i>Ways and Means</i></p> <p>Steve Huffman, Chair Jack Brown Ann Kirkpatrick Michele Reagan Steven Yarbrough</p>	

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Sunset Review Process



Conducting a Sunset Review

SUNSET REVIEW

(Title 41, Chapter 27, Arizona Revised Statutes)

DESCRIPTION

Established by Laws 1978, Chapter 210, the sunset review process is the systematic evaluation of an agency, under the supervision of JLAC, to determine if the merits of the program justify its continuation rather than termination, or its continuation at a level greater than or less than its current level. The entire sunset review process takes place over a 20-month period.

Sunset reviews are based on sunset audits *conducted by either the OAG or a COR*. JLAC initiates the sunset review process by reviewing the list of agencies scheduled for termination and assigning the agencies scheduled for termination to a COR. All agencies scheduled for sunset are assigned to a House and Senate COR. JLAC also makes the determination of whether the OAG or a COR will conduct the sunset audit (called a performance audit if conducted by the OAG). This determination is based upon a number of factors, including: the number of audit hours the OAG estimates a performance audit of the agency will require; the number and seriousness of concerns and issues identified by Legislators, legislative staff or the OAG regarding the agency; and the size and budget of the agency.

Upon completion of the sunset audit, whether conducted by the OAG or the COR, the COR is required to hold at least one public hearing to discuss the audit and receive testimony from agency officials and the public. The COR may hold subsequent hearings to obtain further information as deemed necessary. Upon completion of COR deliberations, including a review of the 12 statutory sunset factors and a presentation by the agency addressing the four required agency factors, the COR must submit a final sunset review report by December 1, containing, in part, its recommendation for continuation, revision, consolidation or termination of the agency.

The final sunset review report contains the COR recommendation to continue, revise, consolidate or terminate the agency and the written agency factors. Legislative staff and Legislative Council typically draft any recommended legislation.

Historically, the COR chair has introduced the legislation necessary to continue, consolidate or revise and agency during the following legislative session; however, *the agency subject to sunset review has the responsibility of requesting the chair, or any other legislative member, to sponsor the necessary legislation*. If the COR recommends that the agency terminate, legislation is not necessary. Legislative staff should communicate this responsibility to the agency.

CONDUCTING A SUNSET REVIEW

A sunset review is based upon an audit conducted by either the OAG (performance audit) or the legislative staff assigned to the COR. The essential difference between a performance audit and an audit conducted by a COR is the depth and scope of the audit. An OAG performance audit is usually conducted over a period of several months and OAG staff actually goes on-site with the agency to review files and records and conduct interviews. COR audits are typically “self” audits as the agency is asked to respond to the sunset factors and legislative staff conducts minimal background and legal research.

The steps for conducting a sunset review when the OAG conducts a performance audit are very similar to the steps for conducting a review when the COR conducts the audit. Following is a brief discussion of staff responsibilities under both of these scenarios.

1. WHAT TO DO IF OAG CONDUCTS THE AUDIT:

Step 1 - Assignment of reviews

- *The OAG submits a list of agencies scheduled for termination to JLAC* - This list includes all agencies statutorily scheduled for sunset termination and an estimation of the hours necessary to complete each agency's review if the OAG were to conduct the review. The OAG submits this list at least 20 months prior to the agencies' scheduled date of termination.
- *JLAC establishes the sunset review schedule* - Based on a review of the sunset termination schedule and audit hours information submitted by the OAG, JLAC approves the audit schedule. JLAC may delay an agency's review if it believes the OAG or the COR will not be able to complete the audit according to schedule. If JLAC delays a review, it is responsible for introducing legislation to statutorily extend the agency's termination date so the agency will not expire pending review.
- *JLAC determines who shall perform the sunset audit* - Based on the sunset schedule and audit hours information submitted by the OAG, JLAC determines whether the OAG or the COR will conduct an agency audit. The more complex agencies are generally assigned to the OAG for an agency-wide performance audit.
- *JLAC assigns agencies subject to review to a COR* - Statute requires all agencies scheduled for a sunset to be assigned to a COR regardless of whether the OAG or the COR conducts the sunset audit. Legislative staff is provided a list of COR assignments by JLAC staff.

Step 2 - Performance Audit

- *The OAG conducts performance audits of assigned agencies* - Legislative staff and all JLAC members receive a copy of the completed performance audit.

Step 3 - Pre-Sunset Hearing

- *Review performance audit* - Legislative staff should review the performance audit.
- *Contact the agency to request submission of written required agency factors* – Agencies are statutorily required to submit written required agency factors prior to the public hearing (ARS §41-2954, paragraph F).
- *Contact other parties* - Upon review of the performance audit, legislative staff should contact the following parties to discuss agency performance, identify problems and other issues relating to the agency:

Joint Legislative Budget Committee (JLBC)
Governor's Office of Strategic Planning and Budgeting (OSPB)
OAG
Professional Associations
Interested Constituents

- *Contact the COR chairman and staff counterpart* - Legislative staff should inform the COR chair of the upcoming sunset review and discuss any potential issues/ concerns.
- *Schedule a public hearing, prepare agenda and materials for members* - The COR is required to hold a public hearing upon receipt of the performance audit, however, more than one meeting may be held, if necessary.

When scheduling the public meeting, legislative staff should consult with agency staff and the OAG to ensure their attendance and ability to present the required agency factors.

At a minimum, the sunset hearing agenda should include the presentation of the performance audit by the OAG, a presentation of the required agency factors and an opportunity for testimony from agency officials and the public. The agenda may also include adoption of the COR recommendations, if additional COR meetings will not be necessary. Materials distributed by legislative staff may include a summary of the performance audit and agency response; the written required agency factors, budget data and any draft recommendations.

- *Notify the agency* - Legislative staff may prepare a notification letter on behalf of the COR chairman stating the date and time of the sunset review hearing. Meeting notices should also be sent to:

COR members
OAG
JLAC members
Attorney General

Legislative Council
JLBC Staff Director
Other interested parties

Step 4 - Sunset Hearing

- *Hold a public hearing* - Statute (ARS § 41-2954) requires the COR to hold a public hearing for the following purposes:
 - (1) Determine the need of the agency to regulate or direct a particular activity.
 - (2) Determine if the agency is meeting its statutory responsibilities and if those responsibilities are necessary.
 - (3) Provide an opportunity for public testimony.
 - (4) Provide an opportunity for the agency to justify its continuation.
- *Sunset factors* - Statute (ARS § 41-2954) requires the COR to consider, at a minimum, the following 12 sunset factors when determining the need for continuation or termination of an agency:
 - (1) The objective and purpose in establishing (continuing) the agency.
 - (2) The effectiveness with which the agency has met its objective and purpose, and the efficiency with which it has operated.
 - (3) The extent to which the agency has operated within the public interest.
 - (4) The extent to which rules adopted by the agency are consistent with the legislative mandate.
 - (5) The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.
 - (6) The extent to which the agency has been able to investigate and resolve complaints within its jurisdiction.
 - (7) The extent to which the Attorney General, or any other applicable agency of state government, has the authority to prosecute actions under the enabling legislation.
 - (8) The extent to which agencies have addressed deficiencies in their enabling statutes which prevent them from fulfilling their statutory mandate.
 - (9) The extent to which changes are necessary, in the laws of the agency, to adequately comply with the factors listed in this subsection.

- (10) The extent to which the termination of the agency would significantly harm the public health, safety or welfare.
 - (11) The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.
 - (12) The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.
- *Required Agency Factors* - Statute requires the agency to prepare a written statement and make a presentation at the first public meeting that addresses the following required agency factors:
 - (1) An identification of the problem or needs which the agency is intended to address.
 - (2) A statement, to the extent practical, in qualitative or quantitative terms, of the objectives of the agency.
 - (3) Identification of any conflicting or overlapping duties with other agencies.
 - (4) An analysis of the consequences of eliminating the agency.

Step 5 - Follow-up

- *Prepare a final sunset report* - Legislative staff prepares a final report pursuant to statutory guidelines (ARS § 41-2954) containing the following information:
 - (1) A recommendation that the agency be continued, revised, consolidated or terminated.
 - (2) A written statement prepared by the agency that contains the required agency factors.
- *Distribute final sunset review report* - By **December 1**, legislative staff should, at a minimum, distribute copies of the final report to the following:

JLAC members	Chief Clerk	Director of the agency subject to review
COR members		
Governor's Office		State Library, Archives & Public Records
Secretary of the Senate		OAG
- *Draft legislation* - Legislative staff and Legislative Council shall draft any recommended legislation. Legislation is not necessary if the COR recommends agency termination.

SUNSET REVIEW PROCESS TIMETABLE*(OAG Conducts a Performance Audit)*

Deadline	Activity
<i>May/June</i>	OAG submits list of agencies subject to sunset review <i>(at least 20 months prior to termination of the agencies)</i>
<i>May/June</i>	JLAC assigns agencies to committees of reference for review <i>Staff is notified of JLAC assignments</i>
<i>August</i>	Draft performance audit completed <i>Agencies may respond to the draft performance audit within 40 days</i>
<i>September/October</i>	OAG submits performance audit report to JLAC <i>Staff schedules Sunset hearing(s)</i>
<i>December</i>	Final sunset review report completed
<i>January</i>	Introduction of legislation to implement COR recommendations
<i>July</i>	Termination of agency, unless legislatively continued

2. WHAT TO DO IF COR CONDUCTS THE PERFORMANCE AUDIT:

Step 1 - Assignment of reviews

- *The OAG submits a list of agencies scheduled for termination to JLAC* - This list includes all agencies statutorily scheduled for sunset termination and an estimation of the hours necessary to complete each agency's review if the OAG were to conduct the review. The OAG submits this list at least 20 months prior to the agency's scheduled date of termination.
- *JLAC establishes the sunset review schedule* - Following a review of the sunset termination schedule and audit hours information submitted by the OAG, JLAC approves the audit schedule. JLAC may delay an agency's review if it believes the OAG or the COR will not be able to complete the audit according to schedule. If JLAC delays a review, it is responsible for introducing legislation to statutorily extend the agency's termination date so the agency will not expire pending review.
- *JLAC determines who shall perform the sunset audit* - Based on the sunset schedule and audit hours information submitted by the OAG, JLAC determines whether the OAG or a COR will conduct an agency audit. The more complex agencies are generally assigned to the OAG for an agency-wide performance audit.
- *JLAC assigns agencies subject to review to a COR* - Statute requires all agencies scheduled for a sunset to be assigned to a COR, regardless of whether the OAG or a COR will conduct the sunset audit. Legislative staff is provided a list of COR assignments by OAG staff.

Step 2 - Initiate Contact

- *Contact the chairman of the COR and staff counterpart* - Legislative staff should inform the COR chair of the upcoming sunset review and discuss any potential issues/ concerns.
- *Notify the agency* - Legislative staff prepares a notification letter on behalf of the COR chair, informing the agency of its coming review and requesting the agency to submit a written report.

The agency must submit a report containing the agency's response to the twelve sunset factors as well as a written statement addressing the four required agency factors listed in ARS § 41-2954. The chair may request other relevant information, such as copies of the agency's annual report or minutes from board meetings. *The written response of the agency, and other relevant information, is the sunset audit when the COR conducts the sunset review.*

The agency should be asked to respond to the chair, by a date certain (*usually mid-August - September*), allowing enough time for legislative staff to review and distribute to COR members the materials received from the agency.

- *Contact other parties* - At a minimum, legislative staff should contact the following parties to discuss agency performance, identify problems and other issues relating to the subject agency:

Joint Legislative Budget Committee
Governor's Office of Strategic Planning and Budgeting
Professional Associations
Interested Constituents

Step 3 - Pre-Sunset Meeting/Review Materials

- *Review and evaluate sunset factors* - Legislative staff should, in conjunction with other information discovered through their research, review the agency's response. At a minimum, staff should ensure that the agency fully responded to the sunset factors.
- *Schedule a public hearing, prepare agenda and materials for members* - Upon receipt of the sunset audit, the COR is required to hold at least one public hearing, however, more than one meeting may be held if necessary. At a minimum, the agenda should include a presentation from agency officials, including a presentation of the required agency factors, and provide an opportunity for public input.

The agenda may also include adoption of the COR recommendations if follow-up COR meetings will not be necessary. Materials distributed by legislative staff may include a summary of the performance audit and agency response, budget data and draft recommendations. Meeting notices should be sent to:

COR members
Legislative Council
Agency officials

JLAC members
JLBC Staff Director
Other interested parties

Step 4 - Sunset Meeting

- *Hold a public hearing* - Statute requires the COR to hold a public hearing for the following purposes:
 - (1) Determine the need of the agency to regulate or direct a particular activity.
 - (2) Determine if the agency is meeting its statutory responsibilities and if those responsibilities are necessary.
 - (3) Provide an opportunity for public testimony.
 - (4) Provide an opportunity for the agency to justify its continuation.
- *Sunset factors* - Statute (ARS § 41-2954) requires the COR to consider, at a minimum, the following 12 sunset factors when determining the need for continuation or termination of an agency:
 - (1) The objective and purpose in establishing the agency.
 - (2) The effectiveness with which the agency has met its objective and purpose and the efficiency with which it has operated.
 - (3) The extent to which the agency has operated within the public interest.
 - (4) The extent to which rules adopted by the agency are consistent with the legislative mandate.
 - (5) The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.
 - (6) The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction.
 - (7) The extent to which the attorney general or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.
 - (8) The extent to which agencies have addressed deficiencies in their enabling statutes which prevent them from fulfilling their statutory mandate.
 - (9) The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in this subsection.
 - (10) The extent to which the termination of the agency would significantly harm the public health, safety or welfare.
 - (11) The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.
 - (12) The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

- *Required Agency Factors* – Statute requires the agency to prepare a written statement and make a presentation at the first public meeting that addresses the following required agency factors:
 - (1) An identification of the problem or the needs that the agency is intended to address.
 - (2) A statement, to the extent practical, in qualitative or quantitative terms, of the objectives of the agency and its anticipated accomplishments.
 - (3) Identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.
 - (4) An assessment of the consequences of eliminating the agency or of consolidating it with another agency.

Step 5 - Follow-up

- *Prepare a final sunset report* - Legislative staff prepares a final report pursuant to statutory guidelines (ARS § 41-2954) containing the following information:
 - (1) A recommendation that the agency be continued, revised, consolidated or terminated.
 - (2) A written statement prepared by the agency that contains the required agency factors.
- *Distribute final sunset review report* - By **December 1**, legislative staff should, at a minimum, distribute copies of the final report to the following:

JLAC members	House Chief Clerk
COR members	Director of the agency subject to review
Governor's Office	State Library, Archives & Public Records
Senate Resource Room	OAG
- *Draft legislation* - Legislative staff and Legislative Council draft any recommended legislation. Legislation is not necessary if the COR recommends agency termination.

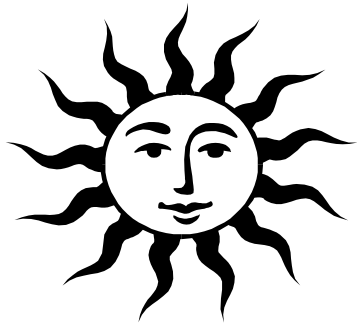
SUNSET REVIEW PROCESS TIMETABLE

(COR Conducting Performance Audit)

Deadline	Activity
May/June	OAG submits list of agencies subject to sunset review <i>(at least 20 months prior to termination)</i>
May/June	JLAC assigns agencies to committees of reference for review <i>Legislative staff is notified of JLAC assignments</i>
June/July	Agency contacted, requested to submit responses to sunset factors
September/October	Staff schedules Sunset hearing(s)
December	Final sunset review report completed
January	Introduction of legislation to implement COR recommendations
July	Termination of agency, unless legislatively continued

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Sunrise Review Process



Conducting a Sunrise Review

SUNRISE REVIEW PROCESS

(ARS § 32-3101 through 32-3106)

DESCRIPTION

The sunrise procedure was established by Laws 1985, Chapter 352, to provide a mechanism for health professions to request that the state regulate a currently unregulated profession or request an expansion of the scope of practice of a regulated profession.

To initiate the sunrise process, an applicant group must submit a written report to JLAC, by September 1, responding to the statutorily prescribed sunrise factors (ARS § 32-3105 or 32-3106). The report is then assigned, by JLAC, to a COR for review. The COR may hold meetings as necessary to consider the report and receive testimony from the public, the applicant group and, if applicable, the regulatory board of the health profession.

Although statute does not require the COR hold meetings to deliberate the sunrise application, the COR is required to study the sunrise report and deliver a report of its recommendations regarding the sunrise to JLAC, the Governor, President of the Senate, Speaker of the House of Representatives and the applicant group by December 1 of the same year the sunrise request is submitted to JLAC. Legislative staff and Legislative Council draft any recommended legislation.

Although not required, the COR chair may introduce any legislation recommended to regulate a currently unregulated profession or request that the scope of practice of a currently regulated profession be expanded, during the following legislative session; however, *the sunrise applicant has the responsibility of requesting the chair, or any other legislative member, to sponsor the legislation.* Legislative staff should communicate this responsibility to the applicant.

SUNRISE FACTORS

1. *GENERAL*

Statute stipulates that an unregulated health profession shall not be regulated unless the regulation is for the express purpose of protecting the public interest. All legislation proposed in order to regulate a health profession for the first time must be reviewed according to the following sunrise criteria:

- (1) If the practice of the health profession were to go unregulated, it could clearly harm or endanger the public health, safety or welfare and the potential for harm is easily recognizable and not remote or dependent on tenuous argument.
- (2) The public needs, and can be reasonably expected to benefit from, the regulation of the profession.
- (3) The public cannot be effectively protected by other means in a more cost beneficial manner.

After evaluating the above criteria, if the Legislature finds that it is necessary to regulate a health profession, statute stipulates that the regulation to be implemented must be the *least restrictive* as possible. Regulation may be achieved through regulation by an existing state agency and implementation of a registration or certification system, rather than the creation of a new licensing board.

2. *APPLICANTS FOR NEW REGULATION*

Pursuant to ARS § 32-3105 (*review statute for full text*), the written sunrise report submitted to JLAC and the COR, applicants for regulation must respond to each of the following sunrise criteria:

- (1) Define the problem and why regulation is necessary, including the nature of potential harm to the public, and the extent to which consumers need and will benefit from the regulation.
- (2) Describe efforts made to address the problem, including voluntary efforts and the use of applicable current law.
- (3) Alternatives considered.
- (4) Benefit to the public if regulation is granted.
- (5) The extent to which regulation may harm the public.
- (6) Proposed maintenance of standards.
- (7) A description of the group proposed for regulation, including a list of associations, organizations and another groups.
- (8) Expected costs to the state and the general public of implementing the proposed regulation.

3. *APPLICANTS FOR INCREASE IN SCOPE OF PRACTICE*

Pursuant to ARS § 32-3106 (*review statute for full text*), the written sunrise report submitted to JLAC and the COR, applicants for increased scope of practice must respond to each of the following sunrise criteria:

- (1) Define the problem and why an increased scope of practice is necessary, including consumers need and benefits, if an increase is granted.
- (2) The extent to which the public can be confident that qualified practitioners are competent.
- (3) The extent to which an increased scope of practice may harm the public.
- (4) The estimated cost to the state and the general public of implementing the proposed increase in scope of practice.

CONDUCTING A SUNRISE REVIEW

Step 1 - Application Submitted

- *An applicant group requesting regulation* - submits a written report defining the problem, explaining the need for regulation and discussing the costs, benefits and negative impact of regulation. This report lists the affected associations, organizations and other practitioner groups, summarizes efforts taken to address the problem, describes alternatives to regulation and discusses the maintenance of professional standards. The report must be submitted to JLAC on or before **September 1**.

Step 2 - Assignment of review

- *JLAC receives the applicant group's report and assigns it to a COR.*

Step 3 - Pre-Sunrise Meeting

- *Review and evaluate sunrise factors* - Legislative staff should: determine if the sunrise request is for an increase in scope of practice or new regulation and review the appropriate sunrise factors; review the applicant's written report; and distribute copies of the report to COR members.
- *Contact the COR chair* - Legislative staff should inform the COR chair of the application for new regulation or expanded scope of practice (sunrise) and discuss any potential issues/concerns.
- *Schedule a public hearing* - A public hearing is not required by law and should be held at the discretion of the COR chair.
- *Prepare agenda and materials for a public hearing* - If the COR chair decides to hold a public hearing, the agenda, at a minimum, should include the presentation of the written report by the applicant and an opportunity for testimony from other officials and the public. The agenda may also include adoption of final recommendations, if additional COR meetings are not necessary. If a public hearing is held, it is recommended that staff contact other legislative staff, such as JLBC and Legislative Council.
- *Recommendation* - The COR, upon review of the applicant group's sunrise request and receipt of testimony, may make recommendations regarding the request for regulation or the increased scope of practice.

Step 4 - Follow-up

- *Prepare final sunrise report* - While a meeting is not required on a sunrise, the COR is required to submit a report of its findings to JLAC, the Governor, President of the Senate and Speaker of the House by **December 1**.
- *Distribute sunrise review report* - Legislative staff distributes copies of the sunrise report and recommendations to the following individuals:

JLAC members & staff
COR members
Governor's Office
Applicant group
State Library, Archives and Public Records
Senate Resource Room
House Chief Clerk

- *Draft legislation* - Legislative staff and Legislative Council draft any recommended legislation.

SUNRISE PROCESS TIMETABLE

Deadline	Activity
<i>September 1</i>	Applicant group submits a written report to JLAC detailing the reasons for regulation or increase in scope of practice
<i>Not specified</i>	JLAC assigns agencies to committees of reference for review
<i>Not specified</i>	Sunrise hearing(s) scheduled <i>(Statute does not require that a hearing be held.)</i>
<i>December 1</i>	Final sunrise report submitted
<i>January</i>	Introduction of legislation to implement COR recommendations

EXHIBIT A



Arizona State Senate

*Capitol Complex
1700 West Washington
Phoenix, AZ 85007*

June 24, 2004

Cliff J. Vanell, Director
Arizona Office of Administrative Hearings.
1400 West Washington, Suite 101
Phoenix, AZ 85007

Dear Director Vanell:

The sunset review process prescribed in Title 41, Chapter 27, Arizona Revised Statutes, provides a system for the Legislature to evaluate the need to continue the existence of state agencies. During the sunset review process, an agency is reviewed by a legislative committee of reference. On completion of the sunset review, the committee of reference recommends to continue, revise, consolidate or terminate the agency.

The Joint Legislative Audit Committee has assigned the sunset review of the Office of Administrative Hearings to the committee of reference comprised of members of the Senate Commerce Committee and the House of Representatives Government and Retirement Committee.

Pursuant to A.R.S. § 41-2954, the committee of reference is required to consider certain factors in deciding whether to recommend continuance, modification or termination of an agency. Please provide your response to those factors as provided below:

1. The objective and purpose in establishing the agency.
2. The effectiveness with which the agency has met its objective and purpose and the efficiency with which it has operated.
3. The extent to which the agency has operated within the public interest.
4. The extent to which rules adopted by the agency are consistent with the legislative mandate.

5. The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.
6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction.
7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.
8. The extent to which the agency has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.
9. The extent to which changes are necessary in the laws of the agency to adequately comply with these factors.
10. The extent to which the termination of the agency would significantly harm the public health, safety or welfare.
11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.
12. The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

Additionally, please provide written responses to the following:

1. Describe the role and function of the agency, including major activities/projects, accomplishments and obstacles to success.
2. Provide financial data, such as number of full-time employees, expenditures and revenues and fee structure, if applicable.
3. An identification of the problem or the needs that the agency is intended to address.
4. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of the agency and its anticipated accomplishments.
5. An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.
6. An assessment of the consequences of eliminating the agency or of consolidating it with another agency.

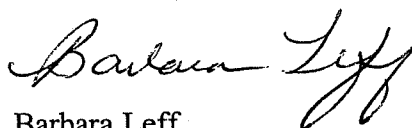
Cliff J. Vanell
June 24, 2004
Page 3

In addition to responding to the factors in A.R.S. § 41-2954, please provide the committee of reference with a copy of your most recent annual report. Your response should be received by September 1, 2004 so we may proceed with the sunset review and schedule the required public hearing. Please submit the requested information to:

Brandy Martin
Arizona State Senate
1700 West Washington
Phoenix, Arizona 85007

Thank you for your time and cooperation. If you have any questions, please feel free to contact me at 602-926-4486 or Brandy Martin, the Senate Commerce Committee Research Analyst, at 602-926-3171.

Sincerely,



Barbara Leff
State Senator
Chair, Commerce Committee of Reference

BL/BM/jas
Attachment

cc: Representative John Huppenthal
Mike Huckins, House Government and Retirement Analyst

41-2954. Committees of reference; membership; performance
review reports; hearings; guidelines;
recommendations; subpoena powers

A. Each standing committee of both legislative houses shall appoint a subcommittee of five members. Not more than three appointees of each house shall be of the same political party. The subcommittees shall jointly constitute a committee of reference in their respective subject matter areas.

B. After receipt of the preliminary sunset review report, the committee of reference shall hold at least one public hearing to receive testimony from the public and from the officials of the agency involved. The agency involved shall prepare a presentation for the first public meeting that addresses the elements of the written statement required by subsection F.

C. The committee of reference shall hold public hearings for the following purposes:

1. To determine the actual need of the agency to regulate or direct the particular activity.

2. To determine the extent to which the statutory requirements of the agency are necessary and are being met.

3. To receive testimony from the public as to the relationship of the agency with the public.

4. To receive testimony from the executive director or other head of the agency as to reasons for the continuation of the agency.

D. The committee of reference shall consider but not be limited to the following factors in determining the need for continuation or termination of each agency:

1. The objective and purpose in establishing the agency.

2. The effectiveness with which the agency has met its objective and purpose and the efficiency with which it has operated.

3. The extent to which the agency has operated within the public interest.

4. The extent to which rules adopted by the agency are consistent with the legislative mandate.

5. The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.

6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction.

7. The extent to which the attorney general or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.

8. The extent to which agencies have addressed deficiencies in their enabling statutes which prevent them from fulfilling their statutory mandate.

9. The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in this subsection.

10. The extent to which the termination of the agency would significantly harm the public health, safety or welfare.

11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.

12. The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

E. The committee of reference shall deliver the final sunset review report of its recommendations to the committee, the president of the senate, the speaker of the house of representatives, the governor, the auditor general and the affected agency by December 1. Such recommendations shall include one of the following:

1. That the state agency be continued.
2. That the state agency be revised or consolidated.
3. That the state agency be terminated pursuant to this chapter.

F. The final sunset review report by the committee of reference shall also include a written statement prepared by the agency involved that contains:

1. An identification of the problem or the needs that the agency is intended to address.

2. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of such agency and its anticipated accomplishments.

3. An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.

4. An assessment of the consequences of eliminating the agency or of consolidating it with another agency.

G. The committee shall oversee the preparation of any proposed legislation to implement the recommendations of the committees of reference and is responsible for the introduction of such legislation.

H. If an agency is continued, it is not necessary to reappoint any member of the governing board or commission of the agency. Such members are eligible to complete their original terms without reappointment or reconfirmation.

I. Each committee of reference shall have the power of legislative subpoena pursuant to chapter 7, article 4 of this title.

EXHIBIT B

JAY TIBSHRAENY
DISTRICT 21

STATE SENATOR
FORTY-SIXTH LEGISLATURE

CAPITOL COMPLEX, SENATE BUILDING
PHOENIX, ARIZONA 85007-2890
PHONE: (602) 926-4481
FAX: (602) 417-3252
EMAIL: jtibshra@azleg.state.az.us



Arizona State Senate

COMMITTEES:

GOVERNMENT,
CHAIRMAN

FAMILY SERVICES,
VICE-CHAIRMAN

COMMERCE

SENATE ETHICS COMMITTEE

June 29, 2004

David Rataczak, Major General
Department of Emergency and Military Affairs
5636 E. McDowell Rd.
Phoenix, Arizona 85008

Dear Mr. Rataczak:

The sunset review process prescribed in Title 41, Chapter 27, Arizona Revised Statutes, provides a system for the Legislature to evaluate the need to continue the existence of state agencies. During the sunset review process, an agency is reviewed by a legislative committee of reference. On completion of the sunset review, the committee of reference recommends to continue, revise, consolidate or terminate the agency.

The Joint Legislative Audit Committee (JLAC) has assigned the sunset review of the Department of Emergency and Military Affairs and the State Emergency Council to the committee of reference comprised of members of the Senate Government Committee and the House of Representatives Commerce & Military Affairs Committee. JLAC has directed the Auditor General to conduct the audit.

Pursuant to A.R.S. §41-2954, the committee of reference is required to consider certain factors in deciding whether to recommend continuance, modification or termination of an agency. In addition to the 12 sunset factors addressed in the Auditor General report, please provide your response to those factors as provided below:

1. An identification of the problem or the needs that the agency is intended to address.
2. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of the agency and its anticipated accomplishments.
3. An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.

4. An assessment of the consequences of eliminating the agency or of consolidating it with another agency.

In addition to responding to the factors in A.R.S. §41-2954, please provide the committee of reference with copies of minutes from your meetings during the past year and your most recent annual report. Your response should be received by September 1, 2004 so we may proceed with the sunset review and schedule the required public hearing. Please submit the requested information to:

Nadine Sapien
Arizona State Senate
1700 West Washington
Phoenix, Arizona 85007

Thank you for your time and cooperation. If you have any questions, please feel free to contact me or 602-926-4481 or Nadine at 602-926-3171.

Sincerely,



Jay Tibshraeny
State Senator
Chair, Senate Government Committee of Reference

Attachment

cc: Representative Michele Reagan
Diana Clay O'Dell, House Commerce & Military Affairs Analyst

41-2954. Committees of reference; membership; performance review
reports; hearings; guidelines; recommendations;
subpoena powers

A. Each standing committee of both legislative houses shall appoint a subcommittee of five members. Not more than three appointees of each house shall be of the same political party. The subcommittees shall jointly constitute a committee of reference in their respective subject matter areas.

B. After receipt of the preliminary sunset review report, the committee of reference shall hold at least one public hearing to receive testimony from the public and from the officials of the agency involved. The agency involved shall prepare a presentation for the first public meeting that addresses the elements of the written statement required by subsection F.

C. The committee of reference shall hold public hearings for the following purposes:

1. To determine the actual need of the agency to regulate or direct the particular activity.

2. To determine the extent to which the statutory requirements of the agency are necessary and are being met.

3. To receive testimony from the public as to the relationship of the agency with the public.

4. To receive testimony from the executive director or other head of the agency as to reasons for the continuation of the agency.

D. The committee of reference shall consider but not be limited to the following factors in determining the need for continuation or termination of each agency:

1. The objective and purpose in establishing the agency.

2. The effectiveness with which the agency has met its objective and purpose and the efficiency with which it has operated.

3. The extent to which the agency has operated within the public interest.

4. The extent to which rules adopted by the agency are consistent with the legislative mandate.

5. The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.

6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction.

7. The extent to which the attorney general or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.

8. The extent to which agencies have addressed deficiencies in their enabling statutes which prevent them from fulfilling their statutory mandate.

9. The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in this subsection.

10. The extent to which the termination of the agency would significantly harm the public health, safety or welfare.

11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.

12. The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

E. The committee of reference shall deliver the final sunset review report of its recommendations to the committee, the president of the senate, the speaker of the house of representatives, the governor, the auditor general and the affected agency by December 1. Such recommendations shall include one of the following:

1. That the state agency be continued.
2. That the state agency be revised or consolidated.
3. That the state agency be terminated pursuant to this chapter.

F. The final sunset review report by the committee of reference shall also include a written statement prepared by the agency involved that contains:

1. An identification of the problem or the needs that the agency is intended to address.

2. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of such agency and its anticipated accomplishments.

3. An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.

4. An assessment of the consequences of eliminating the agency or of consolidating it with another agency.

G. The committee shall oversee the preparation of any proposed legislation to implement the recommendations of the committees of reference and is responsible for the introduction of such legislation.

H. If an agency is continued, it is not necessary to reappoint any member of the governing board or commission of the agency. Such members are eligible to complete their original terms without reappointment or reconfirmation.

I. Each committee of reference shall have the power of legislative subpoena pursuant to chapter 7, article 4 of this title.

EXHIBIT C



JANET NAPOLITANO
GOVERNOR

STATE OF ARIZONA
Department of Emergency And Military Affairs
5636 EAST McDOWELL ROAD
PHOENIX, ARIZONA 85008-3495
(602) 267-2700 DSN: 853-2700



THE ADJUTANT GENERAL
MAJOR GENERAL DAVID P. RATA CZAK
DIRECTOR

August 30, 2004

The Honorable Jay Tibshraeny
Senate Government Committee of Reference
State Senate Office
1700 W Washington
Phoenix, AZ 85007

Dear Senator Tibshraeny,

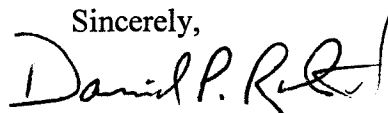
In response to your June 29th letter regarding the sunset review process, we have provided information in order for the Joint Legislative Audit Committee to determine the validity of our agency. Pursuant to ARS §41-2954, the Department of Emergency and Military Affairs has provided the following:

- Responses to the four factors provided in your letter dated June 29, 2004
- Copy of minutes from the last two State Emergency Council Meetings

The 2003-2004 annual report will be posted on the DEMA website on September 15, 2004, which can be found at www.azdema.gov.

If you have any questions, please call Mr. Michael Virgin at 602-267-2732.

Thank you.

Sincerely,

DAVID P. RATA CZAK
Major General, AZ ARNG
The Adjutant General

SEP 02 2004

STATUTORY REPORT PURSUANT TO ARS §41-2954

1. An identification of the problem or the needs that the agency is intended to address.

Established in 1972 under ARS §26-101, the Department of Emergency and Military Affairs is responsible for promoting, protecting, and defending Arizona's citizens' peace, health, and safety. The Department's mission is to "promote, protect and defend the health, safety, peace, and quality of life of the citizens of our communities, state and nation."

2. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of such agency and its anticipated accomplishments.

The Department is directed by the State's Adjutant General, whom the Governor appoints for a five year term under ARS §26-101. However, the individual must also meet federal guidelines to receive the appointment. The Department has both military and emergency management responsibilities. In addition, the Department provides support to the State Emergency Council, and has recently incorporated state homeland security duties into its other functions. To carry out its responsibilities, the Department is organized into the following divisions:

- **Division of Emergency Management**-The Division helps state, county, or local agencies prepare for and respond to disasters in an effort to reduce the impact they have on persons and property. The Division's activities revolve around four areas: preparedness, response, recovery, and mitigation. The tasks within these areas include maintaining the State Emergency Response and recovery Plan, a plan that coordinates the State's activities during a state-declared emergency; conducting exercises to test the Plan; providing training on emergency management topics; coordinating the State's emergency response; helping communities obtain funding to restore structures to pre-disaster status; and helping communities obtain funding for projects designed to mitigate the impact of future disasters. The Division also acts as a pass-through entity for money from the Federal Emergency Management Agency (FEMA), which helps fund similar emergency management activities at the local level. Further, the Division was one of only three states to have its emergency management program be conditionally or fully accredited under the Emergency Management Accreditation Program (EMAP), a program that ensures that accredited members meet national standards. The Division was awarded full accreditation status in July 2003.

Since April 2003, the Division has been assigned several of Arizona's homeland security responsibilities. Specifically, the

Governor has appointed the Division's Director to also serve as the Director of the Arizona Office of Homeland Security. The Division revised the plan to include the State's response during terrorist incidents and developed guidelines for its actions at each federal terrorism alert level. Further, the Division has implemented weapons of mass destruction training and exercises. Finally, the Division also received more than \$38 million in federal homeland security grants for federal fiscal year 2003. According to the Division, it retained a portion of these monies for the grant program's administration and distributed the rest of the monies to the State's local governments. The Division reports that it allocated the monies based on the local government's homeland security risk assessments, which identified the seriousness of the threats in each jurisdiction, and a standard formula that determined the percentage each jurisdiction should receive. Federal government guidelines state that communities can spend these grant funds on planning, training, exercises, equipment, First Responder preparedness, and critical infrastructure preparedness. Specific examples of approved uses include ballistic threat body armor, increased security measures around nuclear power plants and motion detectors.

- **Division of Military Affairs-** The Division of Military Affairs supports the activities of the approximately 7,000 federally paid members of the Arizona Army and Air National Guard. The Division's 45.6 state employees primarily provide the Arizona Army and Air National Guard with facilities and resource management support. The Army National Guard ensures that its approximately 4,300 members are prepared to respond to disasters by typically training one weekend each month and two weeks each year. Similarly, the Air National Guard's 2,800 members also train one weekend each month and an additional fifteen days per year. However, both Army and Air Guard members may be asked to serve additional duty during state and national emergencies. For example, as of October 13, 2003, the President has activated approximately 1,600 members of the Arizona National Guard to participate in Operation Noble Eagle, Operation Enduring Freedom, and Iraqi Freedom.

In addition, the Division maintains Camp Navajo, a major training and storage facility located approximately twelve miles west of Flagstaff, Arizona. This facility serves clients from both the federal government and private industry. For example, Camp Navajo stores various missile rocket motors for both the United States Air Force and Navy and houses helicopter ammunition for a private company.

- **Division of Joint Programs**-This Division is responsible for the Department's facilities, purchasing and contracting, providing information technology support services, resource management and accounting and public affairs. For example, as part of its facilities management duties, the Division provides maintenance and repair services to the Department's buildings, including Army National Guard armories.

In addition, the Joint Programs Division also supervises Project Challenge, a nationally affiliated military-style program for at-risk men and women between the ages of 16 and 18 who wish to obtain a high school equivalency degree. Further, applicants must volunteer to join the program and must not have a record of serious criminal activity. At no cost to the participants or their families, the 17 month program graduates two classes of about 100 students per year.

3. **Identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other agencies.**

Not applicable.

4. **An assessment of the consequences of eliminating the agency or of consolidating it with another agency.**

The Department's role is to provide "personnel, equipment, and funds to contribute to the defense, safety and welfare of the citizens of Arizona." Termination of the Department would undoubtedly harm the public's safety and welfare. The Arizona National Guard is part of the nation's first line of defense, and is an important resource during state emergencies. This has become even more relevant in today's post 9-11 society, where terrorism is a constant threat to our society as a whole. In recent years, the Guard has responded to numerous flood and fire emergencies throughout the state. For example, the National Guard was called to help during the Rodeo-Chediski fire.

The Arizona National Guard also benefits public safety and welfare through participation in federally funded programs designed to assist Arizona law enforcement in drug interdiction efforts, and they aid Arizona youths by providing drug intervention and education programs.

The Division of Emergency Management plays a significant role in public safety and welfare. The Division provides services to coordinate state and local response to disasters. In addition, the Division is the only state

agency through which federal emergency management programs are implemented.

EXHIBIT D

ARIZONA STATE SENATE

RESEARCH STAFF



BRANDY MARTIN
LEGISLATIVE RESEARCH ANALYST
COMMERCE AND ECONOMIC
DEVELOPMENT COMMITTEE
Telephone: (602) 926-3171
Facsimile: (602) 926-3833

TO: INTERESTED PARTIES

DATE: May 16, 2005

SUBJECT: Office of Administrative Hearings Sunset Review

The Office of Administrative Hearings (OAH) is scheduled for sunset review this year. The Joint Legislative Audit Committee has assigned the sunset review of OAH to the committee of reference (COR) comprised of the Senate Commerce Committee and the House of Representatives Government and Retirement Committee. A public hearing will be held to review the performance of the agency and receive testimony from agency officials, interested parties and the public. The COR will make a recommendation on whether to continue, revise, consolidate or terminate the agency. As part of this review process, I am seeking feedback from you on the performance of OAH. Please send me any comments, suggestions or concerns regarding OAH that would be helpful towards the sunset review of the agency.

For your reference, A.R.S. § 41-2954 contains the statutory sunset factors and required agency factors that the COR is required to consider when make their recommendation.

Please submit any comments you may have by October 11, 2004. Thank you for your time and assistance in this matter.

BM/ac

EXHIBIT E

ARIZONA STATE SENATE

RESEARCH STAFF



NADINE SAPIEN
LEGISLATIVE RESEARCH ANALYST
GOVERNMENT COMMITTEE
Telephone: (602) 926-3171
Facsimile: (602) 926-3833

TO: **JOINT LEGISLATIVE AUDIT COMMITTEE**
Representative John Huppenthal, Chairman
Senator Robert Blendu, Vice Chair

DATE: November 22, 2004

SUBJECT: Sunset Review of the Office of the Ombudsman-Citizens' Aide

Attached is the final report of the sunset review of the Office of the Ombudsman-Citizens' Aide, which was conducted by the Senate Government and House of Representatives Government & Retirement Committee of Reference.

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona
The Honorable Janet Napolitano

President of the Senate
Senator Ken Bennett

Speaker of the House of Representatives
Representative Jake Flake

Senate Members
Senator Jay Tibshraeny, Cochair
Senator Slade Mead
Senator Jim Waring
Senator Harry E. Mitchell
Senator Ken Chevront

House Members
Representative John Huppenthal, Cochair
Representative Tom Boone
Representative Cheryl Chase
Representative Deb Gullett
Representative Robert Meza

Office of the Ombudsman-Citizens' Aide
Arizona State Library, Archives & Public Records
Office of the Auditor General

Senate Majority Staff
Senate Research Staff
Senate Minority Staff
Senate Resource Center

House Majority Staff
House Research Staff
House Minority Staff
Chief Clerk

*Senate Government and
House of Representatives Government & Retirement
Committee of Reference Report*

OFFICE OF THE OMBUDSMAN-CITIZENS' AIDE

Background

Pursuant to § 41-2953, Arizona Revised Statutes, the Joint Legislative Audit Committee (JLAC) assigned the sunset review of the Office of the Ombudsman-Citizens' Aide (Office) to the Senate Government and House of Representatives Government & Retirement Committee of Reference for review.

Established in 1995, the Office of the Ombudsman-Citizens' Aide is an independent agency of the Legislature. The purpose of the Office of the Ombudsman-Citizens' Aide is to service citizens' complaints by investigating the administrative acts of state agencies. The mission of the Ombudsman-Citizens' Aide is to improve the effectiveness, efficiency and responsiveness of state government by receiving public complaints, investigating the administrative acts of state agencies and, when warranted, recommending fair and appropriate remedy.

Committee of Reference Sunset Review Procedures

The Committee of Reference held one public meeting on October 28, 2004, to review the Office of the Ombudsman-Citizens' Aide's response to the 12 sunset factors as well as 4 additional questions, as required by A.R.S. § 41-2954, subsections D and F, and to take public testimony. The Committee of Reference received testimony from Patrick Shannahan, Ombudsman, Office of the Ombudsman-Citizens' Aide.

Committee of Reference Recommendations

The Committee of Reference recommended that the Office of the Ombudsman-Citizens' Aide be continued for five years.

Sunset Report Requirement Pursuant to A.R.S. § 41-2954

1. An identification of the problem or the needs that the agency is intended to address

Prior to the establishment of the Ombudsman-Citizens' Aide, citizens had no place to go to get an independent consideration of their grievances against agencies of state government, except to the courts. Since most citizens do not have the financial resources to take on state government, their complaints were often left unheard. Citizens could always complain to the agency, but many did not believe they would get a fair consideration of their complaint because the complaint would be investigated by the same agency that they were complaining about.

The Legislature created the Ombudsman's Office as a way to fill this gap. Citizens can bring their grievances to the Ombudsman-Citizens' Aide and will receive a fair and thorough review of their complaint. If the complaint is justified, the Office will work with the agency and citizens to resolve the issue in a fair and appropriate manner.

2. Statement of the objectives of such agency and its anticipated accomplishments

The objective of the Office is to help citizens interact more effectively with government by arming them with information about their rights, agency policies and procedures and opening channels of communication between citizen and administrator.

3. An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies

The Ombudsman-Citizens' Aide is unique. No other state agency is empowered to conduct independent investigations of citizen complaints. While a number of private, nonprofits agencies serve certain needs of citizens who have complaints, none have the authority to investigate state agencies.

Although members of the Legislature serve their constituents by receiving complaints against state agencies, members do not have the time, resources or authority to go to the agency and conduct thorough investigations. The Office of the Ombudsman-Citizens' Aide, as an independent agency of the legislative branch, has this responsibility.

The Office gives the agency the opportunity to address the citizen's grievance before it gets involved if the agency has not been given that opportunity.

4. An assessment of the consequences of eliminating the agency or of consolidating it with another agency

According to the Ombudsman-Citizens' Aide, eliminating the Office would deprive citizens of the opportunity for an impartial and independent investigation of their concerns. The Office also provides a positive way for citizens to express their frustration and displeasure with an agency action.

It would also remove a vehicle employed by the Legislature to address citizen complaints that go beyond what its constituent services department can address. The Legislature counts on the Ombudsman-Citizens' Aide to provide an independent and thorough review of an agency's actions. The Office also provides recommendations to the Legislature about possible statutory changes.

In addition to the Legislature, the Office accepts referrals from the Governor's Office when the Governor wants more than a response from the agency on her behalf. The media has also come to rely on the objectivity of the Ombudsman-Citizens' Aide when they encounter problems involving state agencies. By referring citizens to the Office or by contacting the Office themselves, they are able to resolve issues that their viewers bring to them. The media outlet can then share credit for the solution and promote the mission of the Office simultaneously.

Attachments

1. Meeting Notice
2. Minutes of the Committee of Reference Meeting

ARIZONA STATE LEGISLATURE

INTERIM MEETING NOTICE **OPEN TO THE PUBLIC**

SENATE GOVERNMENT AND HOUSE OF REPRESENTATIVES GOVERNMENT & RETIREMENT COMMITTEE OF REFERENCE FOR THE SUNSET HEARING OF THE OFFICE OF OMBUDSMAN-CITIZENS' AIDE

Date: Thursday, October 28, 2004

Time: 3:00 p.m.

Place: Senate Hearing Room 1

AGENDA

1. Call to Order
2. Opening Remarks
3. Consideration of Sunset Factors for the Office of Ombudsman-Citizens' Aide
4. Response by the Office of Ombudsman-Citizens' Aide
5. Public Testimony
6. Discussion
7. Recommendations by the Committee of Reference
8. Adjourn

Members:

Senator Jay Tibshraeny, Co-Chair
Senator Ken Cheuvront
Senator Slade Mead
Senator Harry Mitchell
Senator Jim Waring

Representative John Huppenthal, Co-Chair
Representative Tom Boone
Representative Cheryl Chase
Representative Deb Gullett
Representative Robert Meza

10/7/04
NS:nd

ARIZONA STATE LEGISLATURE
Forty-sixth Legislature – Second Regular Session

SENATE GOVERNMENT AND HOUSE OF REPRESENTATIVES
GOVERNMENT & RETIREMENT COMMITTEE OF REFERENCE
FOR THE SUNSET HEARING OF THE
OFFICE OF OMBUDSMAN-CITIZENS' AIDE

Minutes of Meeting
Thursday, October 28, 2004
Senate Hearing Room 1 -- 3:00 p.m.

Chairman Tibshraeny called the meeting to order at 3:03 p.m. and attendance was noted by the secretary.

Members Present

Senator Mead
Senator Mitchell
Senator Waring
Senator Tibshraeny, Cochair

Representative Gullett
Representative Meza

Members Absent

Senator Chevront

Representative Boone
Representative Chase
Representative Huppenthal, Cochair

Speakers Present

Nadine Sapien, Research Analyst, Senate Government Committee
Patrick M. Shannahan, Ombudsman, Office of Ombudsman-Citizens' Aide

Nadine Sapien, Research Analyst, Senate Government Committee, stated that the Joint Legislative Audit Committee (JLAC) assigned the Ombudsman-Citizens' Aide sunset review to the Senate Government Committee and the House Government and Retirement Committees of Reference (COR) and directed the COR, rather than the Auditor General, to conduct the audit. The agencies' written response to the 12 sunset factors and other relevant information serve as the audit when the COR conducts the sunset review (Attachment 1).

Patrick M. Shannahan, Ombudsman, Office of Ombudsman-Citizens' Aide, related that the Office of the Ombudsman-Citizens' Aide is a small, independent office of the State Legislature with an Ombudsman, Deputy Ombudsman, and three Assistant Ombudsmen located on 7th Street about two blocks south of the Veterans' Hospital. By statute, the office cannot be located in the

Capitol or a state office building so people do not unexpectedly run into the director of the agency they are complaining about. The budget is derived from a separate line item in Legislative Council's budget and no fees are charged for services.

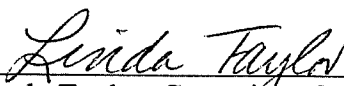
Mr. Shannahan indicated that their job is to help residents of Arizona with problems with state government agencies. Many people hear about the office by word of mouth, television, radio, or newspaper. Complaints are also taken from state government employees (except workplace grievances), but those complaints are less than five percent of their workload. Most complaints are referred from the State Legislature, Governor's Office, Attorney General's Office, state agencies, television stations, community groups, etc. The Ombudsmen listen to the complaint, identify the problem, and determine the best way to help, i.e., coaching, informal assistance, or investigation. He reviewed the principles of the Office (Attachment 1).

Ms. Sapien advised that during the previous sunset review, the agency was given a five-year continuation date by the Legislature. The agency was audited by the National Conference of State Legislatures (NCSL), which audits all of the legislative agencies such as JLBC, Legislative Council, etc. If a five-year continuation is given, the agency will be placed back on the schedule to receive an NCSL audit in five years. If a 10-year continuation is given, the agency will be sent back to a COR and receive an audit similar to what it is receiving today.

Mr. Shannahan stated that he would prefer a five-year continuation because even though the sunset review process is painful and much work, there is some value in having an independent outside audit rather than a self-assessment. NCSL is very professional and the auditors looked at things with fresh eyes. He added that he would, however, prefer not to be on a continuous five-year cycle so that following this continuation, the agency would be placed on a 10-year cycle like everyone else.

Senator Mead moved that the Committee recommend a five-year extension until the next sunset review committee. The motion carried.

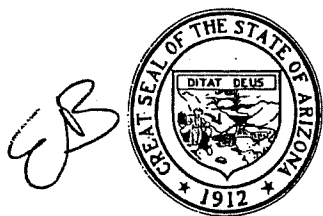
Without objection, the meeting adjourned at 3:18 p.m.



Linda Taylor, Committee Secretary
November 1, 2004

(Original minutes, attachment, and tape are on file in the Office of the Chief Clerk.)

EXHIBIT F



Arizona House of Representatives House Majority Research MEMORANDUM

Elizabeth Baskett
Health Committee Analyst
(602) 926-3072

1700 W. Washington
Phoenix, AZ 85007-2848
FAX (602) 417-3095

To: JOINT LEGISLATIVE AUDIT COMMITTEE
Representative John Huppenthal, Chair
Senator Robert Blendu, Vice Chair

Re: Sunrise application of the Arizona Naturopathic Physicians Association

Date: November 18, 2004

Attached is the final report of the sunrise request submitted by the Arizona Naturopathic Physicians Association, which was conducted by the Senate Health and House of Representatives Health Committee of Reference.

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona
The Honorable Janet Napolitano

President of the Senate
Senator Ken Bennett

Speaker of the House of Representatives
Representative Jake Flake

Senate Members
Senator Toni Hellon, Cochair
Senator Linda Binder
Senator Robert Cannell
Senator Barbara Leff
Senator Richard Miranda

House Members
Representative Deb Gullett, Cochair
Representative Cheryl Chase
Representative Phil Hanson
Representative Phil Lopes
Representative Bob Stump

Arizona Naturopathic Physicians Board of Medical Examiners
Arizona Naturopathic Medical Association
Department of Library, Archives & Public Records
Auditor General

Senate Republican Staff
Senate Research Staff
Senate Democratic Staff

House Majority Staff
House Research Staff
House Democratic Staff

***Senate Health & House of Representatives Health
Committee of Reference Report***

Arizona Naturopathic Physicians Association

Date: December 6, 2004

To: Joint Legislative Audit Committee
Representative John Huppenthal, Chair
Senator Robert Blendu, Vice Chair

Background

Pursuant to Arizona Revised Statutes §32-1304, the Joint Legislative Audit Committee assigned a sunrise review for naturopathic physicians to the Senate Health Committee and the House of Representatives Health Committee of Reference. Attached is a copy of the application submitted by the Arizona Naturopathic Physicians Association (Association).

Committee of Reference Sunrise Review Procedures

The Committee of Reference held one public meeting on November 17, 2004 to review the Association's sunrise application as required by A.R.S. §32-1304 and to hear public testimony on the proposed changes

The Association proposed that naturopathic physicians be permitted to perform, prescribe and administer minerals intravenously to treat their patients. Those testifying included representatives of the Southwest College of Naturopathic Medicine and the Arizona Pharmacy Board.

Committee Recommendation

That the Legislature amend the Naturopathic Medicine Practice Act to permit naturopathic physicians to perform, prescribe and administer minerals intravenously to treat their patients.

Attachments:

1. Sunrise Application submitted by the Arizona Naturopathic Physicians Association.
2. Meeting notice.
3. Minutes of the Committee of Reference meeting.



Arizona House of Representatives House Majority Research MEMORANDUM

Elizabeth Baskett
Health Committee Analyst
(602) 926-3072

1700 W. Washington
Phoenix, AZ 85007-2848
FAX (602) 417-3095

To: Members of the House Health and Senate Health Committees of Reference
Re: Sunrise Request of the Arizona Naturopathic Medical Association
Date: October 29, 2004

The following is some background information regarding the request for an increase in the scope of practice for naturopathic physicians. Also attached is a copy of the sunrise application submitted by the Arizona Naturopathic Medical Association (Association). If you have questions or need additional information, please feel free to contact me.

BACKGROUND

According to statute, the practice of naturopathic medicine is a medical system of diagnosing and treating diseases, injuries, ailments, infirmities and other conditions of the human mind and body including by natural means, drugless methods, drugs, nonsurgical methods, devices, physical, electrical, hygienic and sanitary measures and all forms of physical agents and modalities. Naturopathic physicians are primary health care practitioners, whose techniques include modern and traditional, scientific and empirical methods. In most states of the United States, naturopaths (practitioners of naturopathy) do not prescribe synthetic drugs or practice major surgery.

In Arizona, naturopathic physicians are required to have graduated from a recognized school of naturopathic medicine and to have passed the national naturopathic physicians licensing

examination in order to obtain licensure. In addition applicants for licensure must have satisfactorily completed an approved internship, preceptorship or clinical training program in naturopathic medicine. Once the applicants fulfill all of the above requirements they are eligible for licensure with the State of Arizona Naturopathic Physicians Board of Medical Examiners, which oversees the practice of naturopathic physicians. Currently, the Board licenses 612 naturopathic physicians.

SCOPE OF PRACTICE INCREASE

State law (Naturopathic Medicine Practice Act) and Board rule permit naturopathic physicians to dispense a natural substance, drug or device to a patient for a condition being diagnosed or treated by the doctor if:

- (a) the doctor is certified to dispense the substance by the Board
- (b) the substance being dispensed is properly labeled with dispenser information
- (c) proper records are kept of all substances dispensed and
- (d) the doctor keeps all controlled substances, drugs and devices in a secured cabinet or room.

However, current law limits the ability of naturopathic physicians to prescribe minerals. Although current provisions of the Naturopathic Medicine Practice Act permit the administration of vitamins, the law largely excludes the use of minerals by naturopathic physicians. In addition, the current statutory definition of "drug" has been read to exclude the intravenous administration of minerals.

The Association is requesting an increase in the scope of practice for naturopathic physicians. Specifically, the Association is asking the Legislature to authorize naturopathic physicians to amend the naturopathic medicine practice act to permit naturopathic physicians to perform, prescribe and administer minerals intravenously to treat their patients.

Intravenous vitamin and mineral therapy may involve the administration of a solution of vitamins and/or minerals through an arm vein. The intravenous solution generally contains

vitamin C and various B vitamins as well as minerals. The vitamins and minerals generally would be administered as a therapeutic treatment to replace nutritional deficiencies, act to improve the cell function, help protect cells from damage or help decrease inflammation as well as create other therapeutic benefits.

According to the Association, the use of intravenous vitamins and minerals for the treatment of patients has been shown to have demonstrable therapeutic benefits when administered in the appropriate doses under the appropriate circumstances. Intravenous vitamin and mineral treatment have been used safely by physicians, including naturopathic physicians for several decades.

Existing medical training programs already instruct naturopathic physicians on the protocols, standards and cautions associated with the administration of minerals. The protocols, standards and cautions associated with the administration of minerals is also included in the sixty hours of pharmacotherapeutics that every licensed ND is required to complete by January 1, 2005.

The Association anticipates that significant patient and health benefits will follow from the enactment of the proposed practice expansion and anticipates no harm to the public from the appropriate prescription and administration of intravenous minerals. According to the Association, patients would enjoy more streamlined delivery of health care as the suggested increase in scope would permit recognized treatment approaches to be delivered in an appropriate setting by a qualified and trained practitioner.

OTHER STATES

Staff was able to identify at least three other states that allow for naturopathic physicians to administer minerals intravenously. Following are brief summaries of statutes and administrative rules from other states that have allowed for the increased scope of practice for naturopathic physicians.

Montana- Montana state law neither allows for nor denies naturopathic physicians the ability to administer minerals intravenously. With the law left open in the manner that it is, naturopathic physicians in Montana are able to administer minerals intravenously.

Oregon- Oregon state law requires all naturopathic physicians who are to administer minerals intravenously to undergo 12 additional hours of intravenous training.

Vermont- Vermont state rules for naturopathic physicians allows for saline, sodium bicarbonate, dextrose injection, dextrose and saline, lactated ringers solution and ringers solution to be administered intravenously.

**Sunrise Report Submitted
to Support an Increase in the
Scopes of Practice For
Naturopathic Physicians**

**Submitted by the
Arizona Naturopathic Medical Association**

1. A definition of the problem and why a change in scope of practice is necessary including the extent to which consumers need and will benefit from practitioners with this scope of practice.

This sunrise application seeks permission and direction, pursuant to A.R.S. §§32-3101 to 32-3106 to amend the naturopathic medicine practice act to permit naturopathic physicians to perform prescribe and administer minerals to treat their patients. This change to the naturopathic medicine practice act would accomplish the following significant goals:

Permit naturopathic physicians to practice within the framework of generally accepted naturopathic medicine in at least six states including Hawaii, Montana, New Hampshire, Oregon, Utah and Vermont. *See, e.g.,* Oregon Revised Statutes §685.030(4)

Allow naturopathic physicians to use the skills and educational training gathered during the course of naturopathic medical school and reviewed during the 60 hours of pharmacy continuing medical education mandated by A.R.S. §32-1526(J). *See* Laws 2002 (2nd Reg. Sess.) Ch. 231.

The use of intravenous vitamins and minerals for the treatment of patients has been shown to have demonstrable therapeutic benefits for patients when administered in the appropriate doses under the appropriate circumstances. Intravenous vitamin and mineral treatment have been used safely by physicians, including naturopathic physicians for several decades. Indeed, the Legislature included the intravenous administration of vitamins in the 2002 revision to A.R.S. § 32-1501.

Intravenous vitamin and mineral therapy may involve the administration of a solution of vitamins and/or minerals through an arm vein. The intravenous solution generally contains vitamin C and various B vitamins, as well as minerals. The vitamins and minerals generally would be administered as a therapeutic treatment to replace nutritional deficiencies, act to improve the cell function, help protect cells from damage or help decrease inflammation as well as create other therapeutic benefits .

Current law limits the ability of naturopathic physicians to prescribe minerals, despite being trained in the physiological, anatomical and medical indications and contraindications of natural substances in the course of treating patients. Naturopathic physicians training includes comprehensive information about the use of minerals in the treatment of their patients. Although current provisions of the naturopathic medicine practice act permits the administration of vitamins it largely excludes the use of minerals by naturopathic physicians despite this training and background. The current statutory definition of “drug” has been read to exclude the intravenous administration of minerals. A.R.S. §32-1501(13). But when the legislature drafted this language, it did so with the expectation that a subsequent sunrise application could be after an appropriate interval following the 2002 revisions to the naturopathic physicians practice act. *See* A.R.S. §32-1526(J) (training and continuing education requirements applicable to pharmacology requirements).

Accordingly, permission is sought for the revisions outlined above to be introduced.

2. The extent to which the public can be confident that qualified practitioners are competent including:

(a) Evidence that the profession’s regulatory board has functioned adequately in protecting the public.

The Naturopathic Physicians Board of Medical Examiners has developed a welcome reputation and record for protecting the public. Further evidence of this will be seen in the performance audit to come before this Committee during the coming months.

(b) Whether effective quality assurance standards exist in the health profession, such as legal requirements associated with specific programs that define or endorse standards or a code of ethics.

The practice of naturopathic medicine is overseen on several fronts. First, the Board is the profession’s primary regulator. Second, the profession exists alongside others in the active delivery of health care in this state, as well as in the training of health care professionals. Thus, allopathic

and osteopathic physicians who regularly come into contact with naturopathic physicians have the opportunity to provide feedback through any number of avenues regarding the practice of naturopathy in this state.

Further, in conjunction with the pharmacy schools at the University of Arizona Midwestern University and Southwest College of Naturopathic Medicine, naturopathic physicians have worked closely with academics and pharmacists in the implementation of the pharmacotherapeutics legislation enacted in 2002. The proposal contained in this application would follow directly from this legislation.

- (c) Evidence that state approved educational programs provide or are willing to provide core curriculum adequate to prepare practitioners at the proposed level.**

Existing medical training programs already instruct naturopathic physicians on the protocols, standards and cautions associated with the administration of minerals. The protocols, standards and cautions associated with the administration of minerals were also included in the 60 hours of pharmacotherapeutics that every licensed ND was required to complete by January 1, 2005. This application seeks to establish the framework through which the statutes would be revised to clearly permit the practice under Arizona law.

- 3. The extent to which an increase in the scope of practice may harm the public including the extent to which an increased scope of practice will restrict entry into practice and whether the proposed legislation requires registered, certified or licensed practitioners in other jurisdictions who migrate to this state to qualify in the same manner as state applicants for registration, certification and licensure if the other jurisdiction has substantially equivalent requirements for registration, certification or licensure as those in this state.**

The applicants anticipate that significant patient and health benefits will follow from the enactment of the proposed practice expansion and anticipates no harm to the public from the appropriate prescription and administration of intravenous minerals.

In turn, patients would enjoy more streamlined delivery of health care as the suggested revisions would permit recognized treatment approaches to be delivered in an appropriate setting by a qualified and trained practitioner.

Likewise, no likelihood exists that the legislation will restrict entry into practice. The proposal does not seek to limit who may prescribe or administer intravenous minerals (or chelation therapy) and does not limit those who may, at present, provide this level of care. Professionals who may today deliver these services would remain able to do so after the enactment of this proposal.

4. The cost to this state and to the general public of implementing the proposed increase in scope of practice.

No new educational costs would be imposed by this legislation, as students training to become naturopathic physicians already receive comprehensive instruction in the administration of intravenous minerals

ARIZONA STATE LEGISLATURE

INTERIM MEETING NOTICE OPEN TO THE PUBLIC

SENATE HEALTH AND HOUSE HEALTH COMMITTEE OF REFERENCE

Date: Wednesday, November 17, 2004

Time: 9:00 a.m.

Place: Senate Hearing Room 1

AGENDA

1. Call to Order - Opening Remarks
2. Presentation by the Office of the Auditor General of the non-sunset audit on Adult Behavioral Health Services' HB 2003 Funding for Adults with Serious Mental Illness
3. Presentation by the Office of the Auditor General of the non-sunset audit on the Arizona Medical Board
4. Sunset of the Board of Dental Examiners
 - Presentation by the Board of Dental Examiners
 - Public Testimony
 - Discussion and Recommendations by Committee of Reference
5. Sunset of the Naturopathic Physicians Board of Examiners
 - Presentation by the Naturopathic Physicians Board of Examiners
 - Public Testimony
 - Discussion and Recommendations by Committee of Reference
6. Sunrise Involving Scope of Practice for Naturopathic Physicians
 - Presentation by the Arizona Naturopathic Medical Association
 - Public Testimony
 - Discussion and Recommendations by Committee of Reference
7. Adjourn

Members:

Senator Toni Hellon, Cochair
Senator Linda Binder
Senator Robert Cannell
Senator Barbara Leff
Senator Richard Miranda

Representative Deb Gullett, Cochair
Representative Cheryl Chase
Representative Phil Hanson
Representative Phil Lopes
Representative Bob Stump

10/26/04 cd

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting the Senate Secretary's Office: (602)926-4231 (voice). Requests should be made as early as possible to allow time to arrange the accommodation.

ARIZONA STATE LEGISLATURE

SENATE AND HOUSE OF REPRESENTATIVES HEALTH COMMITTEE OF REFERENCE

Minutes of the Meeting
Wednesday, November 17, 2004
9:00 a.m., Senate Hearing Room 1

Members Present:

Senator Toni Hellon, Cochair
Senator Robert Cannell
Senator Barbara Leff
Senator Richard Miranda

Representative Deb Gullett, Cochair
Representative Phil Hanson
Representative Phil Lopes
Representative Bob Stump

Members Absent:

Senator Linda Binder

Representative Cheryl Chase

Staff:

Beth Kohler, Senate Health Committee Research Analyst
Nadine Sapien, Senate Research Analyst
Elizabeth Baskett, House of Representatives Research Analyst

Senator Hellon called the meeting to order at 9:09 a.m. and attendance was noted.

Monique Cordova, Senior Performance Auditor, Office of Auditor General (OAG), distributed a handout (Attachment 1) and provided an overview of the audit results on the Division of Behavioral Health Services' (BHS) HB 2003 Funding for Adults with Serious Mental Illness (SMI). She explained that the audit reviewed how the Department of Health Services (DHS) used a one-time \$42 million appropriation from the State's tobacco litigation account for services provided to adults with SMI. The programs developed are typically called HB 2003 programs after the original legislation that passed in a 2000 special session.

Ms. Cordova noted that approximately \$41.6 million was allocated to the five regional behavioral health authorities (RBHAs) based on their geographic service area population. The remaining monies were distributed to the Arizona Department of Housing for technical assistance and to the OAG to conduct the audit.

Ms. Cordova next talked about expenditures through fiscal year (FY) 2003, noting that the five RBHAs reported spending more than \$34 million as of June 30, 2003. Legislation required that DHS use the appropriation in the following key areas: 1) design services to help SMI persons achieve the highest level of self sufficiency; and 2) develop performance standards to measure success in using the funds. OAG reviewed and commented on the standards developed by BHS, focusing on their ability to meet the established performance standards. Due to limited data in some categories, OAG was unable to analyze all performance categories.

Ms. Cordova pointed out that the program served more than 3,350 through December 31, 2002. The analysis was restricted to persons who had resided in housing or participated continually in the HB 2003 programs for a minimum of six months.

Ms. Cordova next discussed the audit findings. In Finding One, the research showed that consumers benefited from HB 2003 housing programs. The RBHAs used the funding for two things: 1) to construct or acquire new housing; and 2) to provide housing-related support services. Over \$11.5 million was allocated to housing and the RBHAs were able to obtain an additional \$5 million in matching funds. The housing performance standards that BHS adopted included decreases in substance abuse, hospitalizations and arrests, and increases in housing stability, safety, and social adjustment. It was noted that consumers made gains in six areas: 1) family/living environment; 2) feeling, affect, mood; 3) interpersonal relations; 4) self-care; 5) substance abuse; and 6) thinking/cognition. In addition, the HB 2003 consumers showed more improvement than their counterparts in two comparison groups.

Ms. Cordova next addressed Finding Two, explaining that consumers showed modest gains from intensive case management (ICM) programs. The RBHAs (except Excel) developed two types of ICM teams: high intensity and supportive treatment teams. More than 2,200 consumers participated in the ICM programs. On average, consumers in the ICM programs made modest gains in five clinical function categories: 1) family/living environment; 2) feeling, affect, mood; 3) role performance; 4) self-care; and 5) thinking/cognition. In contrast, a comparison group, which consisted of ValueOptions consumers who were not on such teams during the same period, stayed the same or worsened.

Ms. Cordova added that it is important to note that after the HB 2003 monies are exhausted, the impact of the spending will remain for several years. To protect the State's investment, a 15-year use agreement restricts all the housing projects to SMI persons. Even though service providers own the housing, if the provider defaults on this agreement, the State can take possession of the property. Also, the RBHAs reported that they would continue to offer the ICM services.

Ms. Cordova mentioned that in Finding Three, it was found that rehabilitation activities had increased. Two strategies were pursued for improvement: 1) add rehabilitation specialist to the ICM teams; and 2) expand rehabilitation providers and services. Rehabilitation performance standards included increased vocational participation, social adjustment, recovery, and vocation functioning. Three types of rehabilitation activities were noted: 1) psychosocial and consumer-run activities; 2) education and work training programs; and 3) paid employment.

Ms. Cordova concluded with OAG's recommendations. BHS should conduct its own impact analysis in housing, ICM, and rehabilitation, specifically assessing those items the OAG was unable to review due to data limitation. BHS should also develop recommendations and provide technical assistance to the RBHAs.

In response to Senator Leff, Ms. Cordova replied that only 50 people were part of the analysis even though there are many more consumers in the program. She pointed out that the report has a breakdown of the funds spent on housing and housing assistance.

Leslie Schwabe, Deputy Director, DHS, emphasized that all of the recommendations have been implemented and will be completed by February, 2005.

Representative Lopes commented that the report indicates that with intense monitoring of a program, there can be good benefits for both the government and the individuals they are assisting. In response to Representative Lopes, Ms. Schwabe replied that there are six categories of intensive needs for services. **Mike Franczak, Clinical Director, DHS**, added that the actual intensity of services is based on the need of an individual. He indicated that the average caseloads for SMI are one case manager to 30 individuals; for an individual with high intensity services, the caseload is one manager to 12 individuals. He pointed out that a small fraction of the SMI population are in the high intensity group and as improvement occurs, they are moved from the high intensity services.

In response to Representative Gullett, Ms. Schwabe replied that there was an audit performed by the Office of the Court Monitor under the Arnold vs. Sam lawsuit, specific only to Maricopa County. She explained that this audit found different concerns from the OAG's audit and DHS is pursuing corrective action for the findings. She stressed that DHS and ValueOptions are under a corrective action plan that requires extremely extensive steps, particularly the ratios of case managers to consumers.

In response to Representative Leff's inquiry, Ms. Schwabe answered that over 3,000 individuals were serviced under the \$42 million budget. In Maricopa County, approximately 17,000 individuals fall into the SMI category; statewide there are approximately 30,000. To provide services for the entire SMI population, it would cost over \$500 million (based on data accumulated five years ago). This estimate is currently being updated considering medical inflation, cost of care, and population growth.

In response to Representative Hanson, Ms. Schwabe emphasized that an individual with SMI is rarely cured; it is a chronic condition and considered long-term. However, with appropriate services, SMI consumers can live a fairly productive life.

In response to Senator Leff, Ms. Schwabe noted that under the lawsuit, everyone is eligible for services, with no consideration as to the individual's income.

Bill Chapman, Performance Audit Manager, OAG, distributed a handout (Attachment 2) and provided a brief presentation on the performance audit of the Arizona Medical Board (Board), noting that the audit was performed at the request of Senator Allen and Representative Gullett. He explained that the Board consists of 12 members, with 50.5 staff members and received \$4.8 million in revenues in 2003 (majority from licensing fees).

Mr. Chapman discussed several of the Board's responsibilities: 1) licensing physicians; 2) investigating complaints; 3) disciplining and rehabilitating physicians; and 4) providing information to public on licensed physicians. In 2003, there were 16,500 licensed physicians (with 1,247 new licenses issued and 8,536 licenses renewed). The Board received 1,346 complaints and resolved 1,462.

Mr. Chapman noted two concerns from the audit: 1) misuse of executive director authority to dismiss complaints; and 2) inconsistent investigations. The OAG found that most complaints were adequately investigated and reviewed prior to executive director dismissal. He pointed out that the Legislature in 1999 initially authorized the executive director to dismiss complaints; however, this authority did not extend to complaints involving medical incompetence. In 2001, the Legislature broaden this authority to include quality-of-care complaints. He emphasized that in 2002 and 2003, 92% of dismissals conducted by the executive director were because of quality of care.

Mr. Chapman indicated that during the audit, they reviewed 36 complaints (including 10 malpractice complaints). Most of these complaints were adequately investigated. However, the OAG did have questions on five of the dismissals. Of the five complaints, two were found to be inadequately investigated prior to dismissal. The remaining three complaints appeared to have evidence to support the allegations.

Mr. Chapman stated that the OAG suggests the Board develop and implement additional policies to ensure proper investigations occur. Procedures should be designed to fully document analyses and recommendations and to assist in guiding the decision-making process. He added that at a six-month OAG review, the Board had made substantial progress in implementing these additional policies.

Mr. Chapman next talked about the OAG's second finding, the Board's technological purchases. The Board should better document the need for all these purchases. In 2003, the Board purchased a variety of hardware and software for over \$290,000. Most purchases were not excessive, and for one of its purchases, the Board did not obtain Government Information Technology Agency (GITA) approval as required. This involved the purchase of 11 laptop computers and associated equipment at a cost of \$33,000. He noted that some purchases lacked proper cost analysis or documented business justification.

Mr. Chapman explained that the OAG made two recommendations regarding purchases. First, the Board should annually prepare an internal technology plan supported by documentation. Second, the Board should submit required project investment justification to GITA for review and approval. He mentioned that the Board was in the process of implementing the first recommendation and the second one was implemented.

Mr. Chapman discussed the next findings: 1) high staff turnover; 2) use of vacancy savings; and 3) administrative assistants working at higher grade levels than investigators. He indicated that the audit found that there was a high turnover in staff (60% in 2003), no vacancy savings (FY 2003 expenses increased by nearly \$498,000), and the assistants' salaries are consistent with the Department of Administration's specifications (however, the assistants' salaries were higher than the investigators).

Representative Gullett commented that she is encouraged by the OAG's findings and the progress exhibited by the Board.

Stuart Goodman, representing the Board, reiterated that the Board is in the process of implementing or have implemented all recommendations. The most important change is when

there is a conflict between investigators regarding a complaint resolution, it was determined that the Board will make the ultimate decision. He pointed out that the Board is in transition, as the executive director has resigned as of December 1, 2004. The Board received over 80 applications, which have been narrowed down to four finalists whom they will be interviewing on Saturday.

In response to Senator Hellon, Mr. Goodman indicated that the Dr. Schwartz case is ongoing and he is restricted from discussing the case; however, he did share a letter (Attachment 3) regarding the public information hearing. He added that the Board did restrict Dr. Schwartz' practice in 2003.

In response to Representative Hanson, Mr. Chapman replied that the Board did follow personnel guidelines when terminating employees.

Craig Runbeck, Executive Director, Naturopathic Physicians Board of Medical Examiners (NPBOMEX), noted that there were 24 areas where the OAG indicated the Board needed improvement. In 2001, the NPBOMEX was expanded from five to seven members, and the executive director and one staff member were also replaced. In November 2001, this Committee recommended a three-year continuation of NPBOMEX. This was done in part to give NPBOMEX an opportunity to implement the 24 recommendations. It was also done to provide the time needed to complete the legislatively mandated pharmaceutical therapeutics training. He stated that all but one of the OAG's recommendations were implemented. One was not implemented on the advice of the Attorney General's office.

Mr. Runbeck noted that in the last session, the Legislature added language to the naturopathic statutes formalizing the use of the National Naturopathic Physicians Licensing Examination, which is an improvement over the previous examinations administered by NPBOMEX. The mandated training has been completed and they are currently finishing the required testing. By the first of the year, there will be a list on their website of the naturopathic physicians qualified to prescribe drugs.

Mr. Runbeck added that since he was hired in July, 2001, he has made it a top priority to instill a culture of customer service. The dedication of the team has paid off over the past three years, as noted in the customer satisfaction surveys which consistently indicate a high degree of satisfaction. NPBOMEX has reduced the time it takes to issue a new license from months to an average of 23 days and to renew a license takes only a couple of days. Also, NPBOMEX currently processes and adjudicates complaints on an average of 77 days. He emphasized that NPBOMEX has cleared the backlog of cases that existed at the time he was hired. He explained that the members of NPBOMEX have worked to change their reputation by reorganizing and focusing on accomplishing the Legislative mandates.

In response to Senator Leff, Mr. Runbeck replied that since he first suggested that NPBOMEX fine physicians who do not timely obtain their continuing medical education, he found that it is an irregular practice. Therefore, he feels he does not want to pursue this recommendation.

Representative Gullett moved to continue the Naturopathic Physicians Board of Examiners for ten years. The motion CARRIED by a voice vote.

Dr. Paul Mittman, Naturopathic Physician and President of Southwest College of Naturopathic Medicine, indicated that he supports the continuation of the NPBOMEX and also supports the sunrise application submitted by the Naturopathic Medical Association. He explained that during the past three years, the naturopathic profession has worked closely with the Arizona Medical Association, the Arizona Osteopathic Association, and the Arizona Pharmacy Association (APA) to implement a comprehensive pharmacy continuing medical education certification for all licensed naturopathic physicians in Arizona. The sunrise application was developed with colleagues in those professions. He noted that the draft amendment to the statute has three components. The first request is to amend the naturopathic medicine practice act to permit naturopathic physicians to perform, prescribe and administer minerals intravenously to treat patients. The second request directs NPBOMEX to establish in rules the screening processes, the necessary clinical and laboratory examinations to safely administer intravenous minerals in addition to the vitamins that are already in statute. The third request requires NPBOMEX to establish a certification program that all licensees will undertake in the safe administration of intravenous minerals.

Senator Leff questioned if magnesium and calcium are the only minerals that have a toxicity problem. Dr. Mittman replied that magnesium and calcium have the propensity to cause problems in patients with kidney and cardiac diseases. He indicated that he would be comfortable with amending the language to ensure any mineral with toxicity problems is handled safely.

In response to Representative Hanson, Dr. Mittman replied that naturopathic medicine is currently licensed in 13 states. Of those, not every state includes intravenous prescribing privileges. Of the states that do allow intravenous medications be prescribed by naturopathic physicians, some do allow minerals as well as vitamins.

Kathy Boyle, Executive Director, APA, stated that based on pharmaceutical information, when magnesium and calcium are administered intravenously, there can be dangerous levels of toxicity. Therefore, if the naturopathic physicians want to use those minerals, they must be aware of the toxicity levels.

Representative Lopes indicated that implied in that statement is that there are no toxicity levels in any other minerals. Ms. Boyle replied that magnesium and calcium are the two most prominent minerals that can cause toxicity.

Senator Leff suggested that the amendment should state "magnesium, calcium, and other minerals," so that the law does not limit the toxicity levels to only the two minerals currently in the amendment.

Ms. Boyle explained that Dr. Rick Herrier, of the University of Arizona, was instrumental in developing the pharmacology training modules as required by the Legislature a couple of years ago when naturopathic physicians were required to improve their pharmacology training to support the prescribing privileges in Arizona. Recently, Dr. Herrier was the APA's

representative in working with the Naturopathic Medical Association and Southwest College of Naturopathic Medicine in seeking an agreement on the sunrise request by the Naturopathic Medical Association. The APA feels the agreement protects the public by requiring naturopathic physicians to seek certification in administering the minerals and vitamins intravenously which will be defined by rules. Ms. Boyle recommended that Dr. Rick Herrier should serve as a consultant to NPBOMEX in drafting the rules to implement this piece of legislation if it is approved by the Legislature.

Dr. Mittman stressed that the Southwest College of Naturopathic Medicine has no intention of limiting the protection to the public. He indicated that he had reached an agreement with Dr. Herrier as to what would be the most important language to be in the statute. However, if the Committee feels the language needs to be broaden to additionally protect the public, he would be supportive of doing so.

Senator Hellon suggested that there will be time to change the amendment.

Representative Gullett moved that the Legislature amend the Naturopathic Medicine Practice Act to permit naturopathic physicians to perform, prescribe, and administer minerals intravenously to their patients. The motion CARRIED by a voice vote.

Julie Chapko, Director, Board of Dental Examiners (BODEX), requested the continuation of BODEX for ten years and to change their budget cycle.

Gregory Harris, Lewis and Roca, Arizona Dental Association (ADA), indicated that there is a concern about the use of amalgam for fillings. He said that he feels it is important for the Committee to hear from a scientist and dentist who has spent time working on what is the appropriate method of restoration.

Mr. Harris stressed that the ADA supports BODEX, which fills an important place in the protection of public health and delivery of dental care.

In response to Representative Hanson, Mr. Harris replied that there are 3,594 licensed dentists in Arizona.

Carolyn Dohrenwend, Arizona Coordinator/Citizen Lobbyist, Consumers for Dental Choice/Coalition to Abolish Mercury Dental Fillings, testified in opposition to the continuation of BODEX, suggesting it is one of the most controversial State agencies. In the last sunset review in 1999, BODEX was subjected to intense criticism by lawmakers for being an arm of ADA instead of an advocate for consumers, for blocking consumer access to mercury dentistry, and for refusing to allow information about mercury dental fillings to reach the public. At the hearings, both the BODEX executive director and president promised immediate and lasting change if BODEX was continued. The Committee decided to give BODEX a continuation for five years in order to provide for an earlier legislative review.

Ms. Dohrenwend stressed that BODEX has broken promises to Legislators. Broken promise number one: It continues to be an arm of the ADA, promoting its policies. She suggested that

it is unprofessional conduct if a dentist does not tell the patient what materials are in the dental filling. She indicated that the amalgam fillings are 50% mercury. No patient should be told that mercury amalgam fillings are silver. Broken promise number two: BODEX has not provided information about mercury dental fillings to patients. The majority of patients still do not know that their silver fillings contain mercury, which is leaking from the fillings and ingested by the body. This is important as the mercury has an accumulative effect on the brain.

Ms. Dohrenwend distributed (Attachment 4) and read an excerpt from a hearing in 2002 of the Government Reform Committee at the United States House of Representatives. She noted that there is no debate that mercury amalgam does expose a patient to mercury and can cause major neurological damage to a child or fetus. She emphasized that the Board has continued to use an outdated and discredited 2001 material fact sheet from California. Year over year, legislators question BODEX about whether patients are receiving information on mercury amalgam, but nothing is done. Disclosure without information is meaningless. She also mentioned that California has had a new fact sheet since early 2004.

Ms. Dohrenwend next talked about broken promise number three: BODEX does not allow patients to obtain a second opinion. She pointed out that the BODEX has a policy that the dentist is not ethically obligated to remove dental amalgam from nonallergic patients at the patient's request or even at the recommendation of the patient's physician. This policy is an example of how BODEX continues to promote the dental association orthodoxy.

Ms. Dohrenwend stated that she feels consumers do not want BODEX. She said that she would like to sunset the current BODEX and have all new appointees selected effective July 1, 2005. She also would like a statute that mandates written consent for mercury dental fillings, noting the risks involved. She indicated that five years ago a law was passed regarding informed disclosure which should have corrected this problem, but it has not. She suggested that the new BODEX should have both traditional and holistic dentists.

In response to Senator Hellon, Representative Gullett explained that it is not easy to sunset a board and try to create a new one.

In response to Representative Hanson, Ms. Dohrenwend replied that nationally 27% of the dentists are mercury free.

In response to Senator Leff's question, Ms. Dohrenwend answered that holistic dentists look at the body as a whole. She indicated that mercury is an immune suppressant.

Dr. Rodway Mackert, Professor, School of Dentistry, Medical College of Georgia, noted that the ADA supports the safety and efficacy of dental amalgam. Every dental patient should have an opportunity to make an informed choice about dental options. It is important to note that the ADA does not advocate use of one dental filling material over another. Dentists should have the ability to select from a range of materials that scientific evidence shows are safe to use.

Dr. Mackert indicated that dental amalgam is a cost efficient treatment option. It should be clearly understood that dental amalgam and mercury are not the same thing and their characteristics and properties are not interchangeable. When mercury is combined with other metals to make dental amalgam, it is safe for use in accepted dental applications. Some people mistake the properties of mercury in any form with the properties of dental amalgam. Similar to every substance to which people are exposed, mercury can be toxic in specific forms and dosages. It is important to distinguish dental amalgam (a solid material composed of mercury, silver, tin, and copper) from mercury. In dental amalgam, the mercury reacts with the silver and tends to form hard, stable and safe intermetallic compounds. Exposure to dental amalgam cannot be correctly compared to exposure to an equivalent amount of mercury. The organic form of mercury is of most concern to human health.

Dr. Mackert stated that mercury levels from dental amalgam have been extensively studied. Based on the generally accepted estimates of vapor exposure by Swedish scientists, a person with an average of 13 amalgam fillings would be exposed to 1 to 3 micrograms of mercury vapor a day. This amounts to a small portion of the total mercury that every person is exposed to each day from food, water, and air. In addition, this exposure is to elemental mercury, a form which is far less toxic than the organic mercury through consumption of seafood. There is no danger because of the exposure to the amalgam fillings, which do not create a negative affect on health.

Dr. Mackert emphasized that amalgam fillings when used appropriately to restore decayed teeth are safe. Amalgam fillings have been used for more than 150 years, with less than 100 documented cases of allergic reaction. Research shows that there is no concern with occupational exposure. He also pointed out that researchers have not found a correlation between kidney dysfunction and urinary mercury levels.

Dr. Mackert suggested that if the American Dental Association believed that dental amalgam posed a threat to patients, they would advise dentists not to use it. However, the latest medical evidence shows that dental amalgam is safe. Many world organizations have supported the safe use of dental amalgam. At present, there is no direct restorative material that works as well as dental amalgam for certain types of restorations.

Dr. Mackert noted that although amalgam fillings are safe, its use is declining. In 1990, dental amalgam constituted 67% of all dental restorations. By 1999, that figure had dropped to 45% and today it is at 30% and this trend will probably continue. He added that amalgam has not been banned in other countries.

Dr. Mackert concluded with the statement that healthcare policy must be based on sound science not a political agenda. He noted that the American Dental Association reiterates its position that dental amalgam is a safe restorative material whose continued use has value.

In response to Senator Cannell, Dr. Mackert replied that every dental school teaches that what is done in the mouth affects the entire body. He indicated that there are cases where the amalgam filling is the best treatment for the restorative need.

Michael Margolis, Doctor of Dental Surgery, Doctor of Integrative Medicine, testified that he has seen both sides of BODEX and feels that they should protect the consumers and honor federal law. He stated that the relationship between ADA and BODEX is very close; however, not all dentists belong to ADA and those individuals need representation. He mentioned that BODEX continues to ignore adapting the scientifically accurate information sheet concerning the nature of dental fillings. This Board is determined to keep consumers in the past and has no room for new FDA improved interventions and improvements in the dental practice.

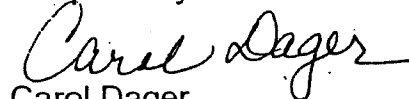
Dr. William Woods, Member, BODEX, commented that the amalgam issue has pros and cons. In 2000, there was a change in the dental practice act that indicates it is unprofessional conduct if a dentist fails to inform a patient of the type of materials used in a dental filling and the reason why the particular filling is being used. As a result, there is no statutory authority that gives the Board of Dental Examiners the power to regulate what kind of dental material is put in a person's mouth. He pointed out that the California Board of Dental Examiners was not sunset; however, the members were replaced. He mentioned some of BODEX's accomplishments, noting the independent reviews which indicate that BODEX is effectively fulfilling its regulatory responsibilities and obligations. He also pointed out that BODEX has removed the backlog of complaints and currently are up to date. He urged the Committee to continue BODEX and change the budget timing to two years.

Senator Hellon moved to continue the Dental Board of Examiners for ten years and recommend a two-year budget cycle. The motion CARRIED by a voice vote.

Attached is a list of the individuals who registered their position on the recommendations (Attachment 5).

There being no further business, the meeting was adjourned at 11:32 a.m.

Respectfully submitted,


Carol Dager
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 115.)

**COMMITTEE OF REFERENCE (COR) ASSIGNMENTS
FOR 2005 SUNSET CYCLE AND NON-SUNSET AUDITS**

Statutory Reference	Agency and Programs Selected for Review	COR Recommendations	Responsible For Conducting Audit
ARS §41-3006.01	Arizona Outdoor Recreation Commission	House: Counties, Mun. & Mil Senate: NRRA	COR
ARS §41-3006.02	Department of Mines and Mineral Resources	House: Natural Res. Senate: NRRA	COR
ARS §41-3006.03	Oil and Gas Conservation Commission	House: ENV Senate: NRRA	COR
ARS §41-3006.04	Arizona Power Authority	House: Commerce Senate: CED	COR
ARS §41-3006.05	State Personnel Board	House: GRGFA Senate: GOV	COR
ARS §41-3006.06	Department of Administration	House: GRGFA Senate: GOV	OAG
ARS §41-3006.07	Election Officer Education, Training and Certification Advisory Committee	House: JUD Senate: JUD	COR
ARS §41-3006.08	Arizona State Retirement System	House: PIR Senate: FIN	OAG
ARS §41-3006.09	Elected Officials' Retirement Plan; Public Safety Personnel Retirement System; Corrections Officer Retirement Plan	House: PIR Senate: FIN	COR
ARS §41-3006.10	Board of Homeopathic Medical Examiners	House: Health Senate: Health	COR

Statutory Reference	Agency and Programs Selected for Review	COR Recommendations	Responsible For Conducting Audit
ARS §41-3006.11	Board for Private Postsecondary Education	House: Univ, Comm Coll. & Tech. Senate: HED	COR
ARS §41-3006.12	State Foster Care Review Board	House: Human Services Senate: FS	OAG
ARS §41-3006.13	Prescott Historical Society	House: GRGFA Senate: GOV	COR
ARS §41-3006.14	Radiation Regulatory Agency and Hearing Board	House: ENV Senate: CED	COR
ARS §41-3006.15	Board of Technical Registration	House: COM Senate: CED	COR
ARS §41-3006.16	Health Facilities Authority	House: Health Senate: Health	COR
ARS §41-3006.17	Industrial Commission	House: COM Senate: CED	COR
ARS §41-3006.18	Occupational Safety and Health Advisory Committee	House: COM Senate: CED	COR
ARS §41-3006.19	Boiler Advisory Board	House: COM Senate: CED	COR
ARS §41-3006.20	Employment Advisory Council	House: COM Senate: CED	COR
ARS §41-3006.21	Occupational Safety and Health Review Board	House: COM Senate: CED	COR

Statutory Reference	Agency and Programs Selected for Review	COR Recommendations	Responsible For Conducting Audit
ARS §41-3006.22	Department of Revenue	House: Ways & Means Senate: FIN	OAG
ARS §41-3006.23	Department of Economic Security	House: Human Services Senate: FS	OAG
ARS §41-3006.25	Government Information Technology; Information Technology Authorization Committee	House: GRGFA Senate: GOV	OAG
ARS §41-3006.26	Medical Radiologic Technology Board of Examiners	House: Health Senate: Health	COR
ARS §41-1279.03	Maricopa County Transportation Excise Tax	House: Transportation Senate: Transportation	OAG
Laws 2004 Chapter 279	Nursing Care Institution Administrators and Assisted Living Facility Managers Board	House: Health Senate: Health	OAG
Laws 2002 Chapter 245, §4	Review of Ultrasounds	House: Health Senate: Health	OAG

**PRESIDENT AND SPEAKER RECOMMENDATIONS
FOR COMMITTEE OF REFERENCE (COR) ASSIGNMENTS
FOR 2006 SUNSET CYCLE AND NON-SUNSET AUDITS**

Statutory Reference	Agency and Programs Selected for Review	COR Recommendations	Responsible for Conducting Audit
A.R.S. §41-3007.01	Agricultural Best Management Practices Advisory Committees	Senate: NRRA House: NRA	COR
A.R.S. §41-3007.02	Grazing Best Management Practices Advisory Committee	Senate: NRRA House: NRA	COR
A.R.S. §41-3007.03	Arizona Exposition and State Fair Board	Senate: GOV House: GRGFA	COR
A.R.S. §41-3007.04	Board of Respiratory Care Examiners	Senate: HEALTH House: HEALTH	COR
A.R.S. §41-3007.05	Governor's Regulatory Review Council	Senate: GAR House: GRGFA	OAG
A.R.S. §41-3007.06	Arizona Uniform Plumbing Code Commission	Senate: CED House: COMMERCE	COR
A.R.S. §41-3007.07	Arizona Criminal Justice Commission	Senate: JUD House: JUD	COR
A.R.S. §41-3007.08	Property Tax Oversight Commission	Senate: FIN House: WM	COR
A.R.S. §41-3007.09	School Safety Program Oversight Committee	Senate: K-12 ED House: K-12 ED	COR
A.R.S. §41-3007.10	Automobile Theft Authority	Senate: TRANS House: TRANS	COR

Statutory Reference	Agency and Programs Selected for Review	COR Recommendations	Responsible for Conducting Audit
A.R.S. §41-3007.11	Board of Osteopathic Examiners in Medicine and Surgery	Senate: HEALTH House: HEALTH	COR
A.R.S. §41-2958	Department of Education	Senate: K-12 ED House: K-12 ED	OAG
A.R.S. §41-1279.03	Pinal County Transportation Excise Tax	Senate: TRANS House: TRANS	OAG
A.R.S. §41-1279.03	School District Performance Audits (San Carlos Unified, Phoenix Elementary, Amphitheater Unified, Bisbee Unified, Alpine Elementary, Avondale Elementary, Deer Valley Unified, and Litchfield Elementary)	Senate: K-12 ED House: K-12 ED	OAG
A.R.S. §41-1966	DES Child Protective Services	Senate: FAMILY SERVICES House: HUMAN SERVICES	OAG
Laws 2004 Chapter 39, §2	Administrative Office of the Courts	Senate: JUD House: JUD	OAG
Laws 2005 Chapter 256	Behavioral Health Services	Senate: HEALTH House: HEALTH	OAG
Laws 2005 Chapter 328, §24	AHCCCS Healthcare Group Program	Senate: HEALTH House: HEALTH	OAG